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International Court of Justice

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Official transcript of the International Military Tribunal, in the matter of: The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on 4 December, 1945, 1000-1230, Lord Justice Lawrence, presiding.

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THE PRESIDENT: I will call on the Chief Prosecutor for Great Britain and Northern Ireland.

SIR HARTLEY SHAWCROSS: May it please the Tribunal:

On an occasion to which reference has and will be made Hitler, the Leader of the Nazi Conspirators who are now on trial before you is reported as having said in reference to their warlike plans:

"I shall give a propagandist cause for starting the war, never mind whether it be true or not. The victor shall not be asked later on whether we tell the truth or not. In starting and making a war not the right is what matters but victory - the strongest has the right."

The British Empire with its Allies has twice, within the space of 25 years, been victorious in wars which have been forced upon it, but it is precisely because we realise that victory is not enough; that might is not necessarily right; that lasting peace and the rule of International Law is not to be secured by the strong arm alone, that the British Nation is taking part in this trial. There are those who would perhaps say that these wretched men should have been dealt with summarily without trial by "executive action"; that their power for evil broken, they should be swept aside into oblivion without this elaborate and careful investigation into the part which they played in bringing this war about. Vae Victis. Let them pay the penalty of defeat. But that was not the view of the British Government. Not so would the Rule of Law be raised and strengthened on the international as well as upon the municipal plane; not so would future generations realise that right is not always on the side of the big battalions; not so would the world be made aware that the waging of aggressive war is not only a dangerous venture but a criminal one. Human memory is short.

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Apologists for defeated nations are sometimes able to play upon the sympathy and magnanimity of their victors so that the true facts, never authoritatively recorded, become obscured and forgotten. One has only to recall the circumstances following upon the last World War to see the dangers to which, in the absence of any authoritative judicial pronouncement a tolerant or a credulous people may be exposed. With the passage of time the former tend to discount, perhaps because of their very horror, the stories of aggression and atrocity that may be handed down: and the latter , the credulous, misled by perhaps fanatical and perhaps dishonest propagandists, come to believe that it was not they but their opponents who were guilty of that they would themselves condemn. And so we believe that this Tribunal, acting, as we know it will act notwithstanding its appointment by the victorious powers, acting with complete and judicial objectivity, will provide a contemporary touchstone and an authoritative and impartial record to which future historians may turn for truth and future politicians for warning. From this record shall future generations know not only what our generation suffered but also that our suffering was the result of crimes, crimes against the laws of peoples which the peoples of the world upheld and will continue in the future to uphold, to uphold by international co-operation, not based merely on military alliances but grounded, and firmly grounded in the rule of law.

Nor, though this procedure and this Indictment of individuals may be novel, is there anything new in the principles which by this prosecution we seek to enforce. Ineffective though, alas, the sanctions proved themselves to be, the Nations of the world had, as it will be my purpose in addressing the Tribunal to show, had sought to make aggressive war an international crime, and although previous tradition has sought to punish States rather than individuals, it is both logical and right that if the act of waging war is itself an offence against International Law those individuals who shared personal responsibility for bringing such wars about should answer personally for the course into which they led their states. Again, individual war crimes have long been recognised by International Law as triable by the Courts of those States whose nationals have been outraged

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at least so long as a state of war persists. It would be illogical in the extreme if those who, although they may not with their own hands have committed individual crimes, were responsible for systematic breaches of the laws of war affecting the nationals of many States should escape for that reason. So also in regard to crimes against humanity. The right of humanitarian intervention on behalf of the rights of man trampled upon by a State in a manner shocking the sense of mankind has long been considered to form part of the law of Nations. Here, too, the Charter merely develops a pre-existing principle. If murder, raping and robbery are indictable under the ordinary municipal laws of our countries shall those who differ from the common criminal only by the extent and systematic nature of their offences escape accusation?

It is, as I shall shew, the view of the British Government that in these matters this Tribunal will apply to individuals not the law of the victor but the accepted principles of international usage in a way which will, if anything can, promote and fortify the rule of International Law and safeguard the future peace and security of this war-stricken world.

By agreement between the Chief Prosecutors it is my task on behalf of the British Government and of the other States associated on this Prosecution to present the case on Count 2 of the Indictment and to show how these Defendants in conspiracy with each other and with persons now now before this Tribunal planned and waged a war of aggression in breach of the Treaty obligations by which, under International Law, Germany, as other States, had sought to make such wars impossible.

That task falls into two parts. The first is to demonstrate the nature and the basis of the Crime against Peace which is constituted under the Charter of this Tribunal, by waging wars of aggression and in violation of Treaties; and the second is to establish beyond all possibility of doubt that such wars were waged by these Defendants.

As to the first, it would no doubt be sufficient just to say this. It is not incumbent upon the Prosecution to prove that wars of aggression and wars in violation of International Treaties are, or ought to be, International Crimes. The Charter of this Tribunal has prescribed that they are crimes and that the Charter is the Statute and the law of this Court. Yet, though

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that is the clear and mandatory law governing the jurisdiction of this Tribunal, we feel that we should not be fully discharging our task in the abiding interest of international justice and morality unless we showed to the Tribunal, and indeed to the world, the position of this provision of the Charter against the whole perspective of International Law. For just as in the experience of our Country, some old English Statutes were merely declaratory of the Common Law, so this Charter substantially declares and creates a jurisdiction in respect of what was already the

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Laws of Nations.

Nor is it unimportant to emphasize that aspect of the matter lest there be some, now or hereafter, who might allow their judgment to be warped by plausible catchwords or by an uninformed and distorted sense of justice towards these Defendants. It is not difficult to be misled by such phrases as that resort to war in the past has not been a crime: that the power to resort to war is one of the prerogatives of the sovereign State; even that this Charter in constituting wars of aggression a crime has imitated one of the most obnoxious doctrines of National Socialist jurisprudence, namely post factum legislation. But the Charter is in this respect reminiscent of Bills of Attainder - and that these proceedings are no more than a measure of vengeance, subtly concealed in the garb of judicial proceedings which the Victor wreaks upon the Vanquished. These things may sound plausible - yet they are not true. It is, indeed, not necessary to doubt that some aspects of the Charter bear upon them the imprint of significant and salutary novelty. But it is our submission and our conviction, which we affirm before this Tribunal and the world, that fundamentally the provision of the Charter which constitutes wars, such wars as these Defendants joined in waging and in planning a crime, is not in any way an innovation. This provision of the Charter does no more than constitute a competent jurisdiction for the punishment of what not only the enlightened conscience of mankind but the Law of Nations itself had constituted an International Crime before this Tribunal was established and this Charter became part of the public law of the world.

So first let this be said. Whilst it may be true that there is no body of international rules amounting to law in the Austinian sense of a rule imposed by a sovereign upon a subject obliged to obey it under some definite sanction, yet for fifty years or more the people of the world, striving perhaps after that ideal of which the

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poet speaks:

"When the War Drums throb no longer
And the Battle Flags are furled,
In the Parliament of Man,
The Federation of the World"

the people of the world have sought to create an operative system of rules based upon the consent of nations to stabilise international relations, to avoid war taking place at all and to mitigate the results of such wars as took place. The first such treaty was of course the Hague Convention of 1899 for the Pacific Settlement of International Disputes. That Convention was, indeed, of little more than precatory effect and we attach no weight to it for the purposes of this case, but it did establish agreement that in the event of serious disputes arising between the signatory powers, they would as far as possible submit to mediation. That Convention was followed in 1907 by another Convention reaffirming and slightly strengthening what had previously been agreed. These early conventions fell indeed very far short of outlawing war or of creating any binding obligation to arbitrate. I shall certainly not ask the Tribunal to say any crime was committed by disregarding those Conventions.

But at least they established that the contracting powers accepted the general principle that if at all possible war should be resorted to only if mediation failed.

Although these Conventions are not mentioned in this Indictment, I am not relying on them save to show the historical development of the law, and it is unnecessary, therefore, to argue about their effect for the place which they once occupied has been taken by far more effective instruments. I mention them now merely for this, that they were the first steps towards that body of rules of law which we are seeking here to enforce.

There were, of course, other individual agreements between particular States, agreements which sought to preserve the neutrality of individual countries, as, for instance, that of Belgium, but

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those agreements were inadequate, in the absence of any real will to comply with them, to prevent the First World War in 1914.

Shocked by the occurrence of that catastrophe, the Nations of Europe, not excluding Germany, and of other parts of the world, came to the conclusion that in the interests of all alike a permanent organization of the Nations should be established to maintain the peace. And so the Treaty of Versailles was prefaced by the Covenant of the League of Nations.

Now, I say nothing at this moment of the general merits of the various provisions of the Treaty of Versailles. They have been criticized, some of them perhaps justly criticized, and they were certainly made the subject of much bellicose propaganda in Germany. But it is unnecessary to inquire into the merits of the matter, for however unjust one might for this purpose assume the provisions of the Treaty of Versailles to have been, they contained no kind of excuse for the waging of war to secure an alteration in their terms. Not only was it a settlement by agreement of all the difficult territorial questions which had been left outstanding by the war itself, but it established the League of Nations which, if it had been loyally supported, could so well have resolved those international differences which might otherwise have led, as indeed they eventually did lead, to war. It set up in the Council of the League, in the Assembly and in the Permanent Court of International Justice, a machine not only for the peaceful settlement of international disputes, but also for the frank ventilation of all international questions by open and free discussion. At that time, in those years after the last war, the hopes of the world stood high. Millions of men in all countries -- perhaps even in Germany itself -- had laid down their lives in what they hoped and believed was a war to end war. Germany herself entered the League of Nations and was given a permanent seat on the Council, and on that Council as in

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the Assembly of the League, German Governments which preceded that of the Defendant Von Papen in 1932 played their full part. In the years from 1919 to that time in 1932, despite some comparatively minor incidents in the heated atmosphere which followed the end of the war, the peaceful operation of the League continued. Nor was it only the operation of the League which gave ground,

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and good ground, for hope that at long last the rule of law would replace that of anarchy in the international field.

The Statesmen of the world deliberately set out to make wars of aggression an international Crime. These are no new terms invented by the Victors to embody in this Charter. They have figured, and they have figured prominently, in numerous treaties, in governmental pronouncements, and in the declarations of Statesmen in the period preceding the Second World War. In treaties concluded between the Union of Soviet Socialist Republics and other states, such as Persia in 1927, France in 1935, China in 1937, the contracting parties undertook to refrain from any act of aggression whatever against the other party. In 1933, the Soviet Union became a party to a large number of treaties containing a detailed definition of aggression, and the same definition appeared in the same year in the authoritative Report of the Committee on Questions of Security set up in connection with the Conference for the Reduction and Limitation of Armaments. But at this time States were going beyond committments to refrain from wars of aggression and to assist States which were victims of aggression. They were condeming aggression in unmistakable terms. In the anti-War Treaty of Non-Aggression and Conciliation which was signed on the 10th of October 1933, a number of American States subsequently joined by practically all the States of the American Continent and a number of European countries as well, the Contracting Parties solemnly declared that "they condemn wars of aggression in their mutual relations or in those of other States". And that treaty was fully incorporated into the Buenos Aires Convention of December 1936, signed and ratified by a large number of American countries, including, of course, the United States. And previously, in 1928, the Sixth Pan-American Conference had adopted a resolution declaring that as "war of aggression constitutes a crime against the human species...all aggression is illicit and as such is declared prohibited." A year earlier, as long ago as September 1927, the Assembly of the League of Nations adopted a resolution affirming the conviction that "a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime" and going on to

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declare that "all wars of aggression are, and shall always be, prohibited". The first Article of the Draft Treaty for Mutual Assistance of 1923 read in these terms: "The High Contracting Parties, affirming that aggressive war is an international crime, undertake the solemn engagement not to make themselves guilty of this crime against any other nation." In the Preamble to the Geneva Protocol of 1924, it was stated that "offensive warfare constitutes an infraction of solidarity and an international crime." These instruments that I have just last mentioned remained, it is true, unratified for various reasons, but they are not without significance or value.

These repeated declarations, these repeated condemnations of wars of aggression, testified to the fact that with the establishment of the League of Nations, with the legal developments which followed it, the place of war in International Law had undergone a profound change. War was ceasing to be the unrestricted perogative of sovereign states. The Covenant of the League of Nations did not totally abolish the right of war. It left, perhaps, certain gaps which were probably larger in theory than in practice. But in effect it surrounded the right of war by procedural and substantive checks and delays, which if the Covenant had been faithfully observed, would have amounted to an elimination of war, not only between Members of the League, but also, by reason of certain provisions of the Covenant in the relations of non-Members as well. And thus, the Covenant of the League restored the position as it had existed at the dawn of International Law, at the time when Grotius was laying down the foundations of the modern law of nations and established the distinction, a distinction accompanied by profound legal consequences in the sphere, for instance of neutrality, between a just war and an unjust war.

Nor was that development arrested with the adoption of the Covenant of the League. The right of war was further circumscribed by a series of treaties, numbering - it is an astonishing figure but it is right - nearly a thousand, of arbitration and conciliation embracing practically all the nations of the world. The so-called Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice, the clause which conferred upon the Court compulsory jurisdiction with regard

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to the most comprehensive categories of disputes, and which constituted in effect by far the most important compulsory treaty of arbitration, compulsory arbitration in the post-war period, was widely signed and ratified. Germany herself signed it in 1927 and her signature was renewed and renewed, for a period of five years, by the Nazi Government in July of 1933. Significantly, that ratification was not again renewed on the expiration of its five years' validity in March of 1938, not renewed again by Germany. Since 1928 a considerable number of States signed and ratified the General Act for the Pacific Settlement of International Disputes which was designed to fill the gaps left by the Optional Clause and by the existing treaties of arbitration and conciliation.

And all this vast network of instruments of Pacific settlement testified to the growing conviction that war was ceasing to be the normal or the legitimate means of settling international disputes. The express condemnation of wars of aggression, which I have already mentioned, supplies the same testimony. But there was, of course, more direct evidence pointing in the same direction. The Treaty of Locarno of the 16th October 1925, to which I shall have occasion to refer presently, and to which Germany was a party, was more than a treaty of arbitration and conciliation in which the parties undertook definite obligations with regard to the Pacific settlement of disputes which might arise between them. It was, subject to clearly specified exceptions of self-defense in certain contingencies, a more general undertaking in which the parties to it agreed that they would in no case attack or invade each other or resort to war against

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each other. And that constituted a general renunciation of war, and it was so considered to be in the eyes of international jurists and in the public opinion of the world. The Locarno Treaty was not just another of the great number of arbitration treaties which were being concluded at this time. It was regarded as a kind of cornerstone in the European settlement and in the new legal order in Europe in partial, just and, indeed, generous substitution for the rigors of the Treaty of Versailles. And with that treaty, the term "outlawry of war" left the provinceof mere pacifist propaganda. It became current in the writings on international law and in the official pronouncements of governments. No one could any longer say, after the Locarno Treaty, no one could any longer associate himself with the plausible assertion that at all events, as between the parties to that treaty, war remained an unrestricted right of sovereign States.

But although the effect of the Locarno Treaty was limited to the parties to it, it had wider influence in paving the way towards that most fundamental, that truly revolutionary enactment in modern international law, namely, the General Treaty for the Renunciation of War of 27 August 1928, the Pact of Paris, the Kellogg-Briand Pact. That treaty, a most deliberate and carefully prepared piece of international legislation, was binding in 1939 on more than 60 nations, including Germany. It was, and it has remained, the most widely signed and ratified international instrument. It contained no provision for its termination, and it was conceived, as I said, as the cornerstone of any future international order worthy of the name. It is fully part of international law as it stands today, and it has in no way been modified or replaced by the Charter of the United Nations. It is right, in this solemn hour in the history of the world, when the responsible leaders of a State stand accused of a premeditated breach of this great Treaty which was, which remains, a source of hope and of faith for mankind, to set out in detail its two operative Articles and its Preamble. Now I read them to the Tribunal -- first the Preamble, and it starts like this:

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"The President of the German Reich" -- and the other States associated --

THE PRESIDENT: Shall we find it among the documents?

SIR HARTLEY SHAWCROSS: It will be put in. I don't think you have it at the moment.

"The President of the German Reich, ...

"Deeply sensible of their solemn duty to promote the welfare of mankind;

"Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

"Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly progress, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

"Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavour and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficient provisions, thus uniting civilized nations of the world in a common renunciation of war as an instrument of their national policy;"

Then, Article I:

"The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another."

And Article II:

"The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

In that Treaty, that General Treaty for the Renunciation of War,

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practically the whole civilized world abolished war as a legally permissible means of enforcing the law or of changing it. The right of war was no longer of theessence of sovereignty. Whatever the position may have been at the time of the Hague Convention, whatever the position may have been in 1914, whatever it may have been in 1918 -- and it is not

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necessary to discuss it -- no International lawyer of repute, no responsible Statesman, no soldier concerned with the legal use of Armed Forces, no economist or industrialist concerned in his country's war economy could doubt that with the Pact of Paris on the Statute Book, a war of aggression was contrary to International Law. Nor have the repeated violations of the Pact by the Axis Powers in any way affected its validity. Let this be firmly and clearly stated. Those very breaches, except perhaps to the cynic and the malevolent, have added to the strength of the Treaty; they provoked the sustained wrath of peoples angered by the contemptuous disregard of this great Statute and determined to vindicate its provisions. The Pact of Paris is the Law of Nations. This Tribunal will declare the world must enforce it.

Let this also be said, that the Pact of Paris was not a clumsy instrument likely to become a kind of signpost for the guilty. It didn't enable Germany to go to war against Poland and yet rely, as against Great Britain and France, on any immunity from warlike action because of the very provisions of the Pact. For the Pact laid down expressly in its Preamble that no State guilty of a violation of its provisions might invoke its benefits. And when, on the outbreak of the Second World War, Great Britain and France communicated to the League of Nations that a state of war existed between them and Germany as from the 3rd of September, 1939, they declared that by committing an act of aggression against Poland, Germany had violated her obligations assumed not only towards Poland but also towards the other signatories of the Pact. A violation of the Pact in relation to one signatory was an attack upon all the other signatories and they were entitled to treat it as such. I emphasize that point lest any of these defendants should seize upon the letter of the Particulars of Count Two of the Indictment and seek to suggest that it was not Germany who initiated war with the United Kingdom and France on 3 September 1939. The declaration of war came from the United Kingdom and from France; the act of war and its commencement came from Germany in violation of the fundamental enactment to which she was a party.

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The General Treaty for the Renunciation of War, this great constitutional instrument of an international society awakened to the deadly dangers of another Armageddon, didn't remain an isolated effort soon to be forgotten in the turmoil of recurrent international crises. It became, in conjunction with the Covenant of the League of Nations or independently of it, the starting point for a new orientation of governments in matters of peace, war, and neutrality. It is of importance, I think to quote just one or two of the statements which were being made by governments at that time in relation to the effect of that Pact. In 1929, His Majesty's Government in the United Kingdom said in connection with the question of conferring upon the Permanent Court of International Justice jurisdiction with regard to the exercise of belligerent rights in relation to neutral States -- and it illustrates the profound change which was being accepted as having taken place as a result of the Pact of Paris in International Law:

"But the whole situation rests, and international law on the subject has been entirely built up, on the assumption that there is nothing illegitimate in the use of war as an instrument of national policy, and, as a necessary corollary, that the position and rights of neutrals are entirely independent of the circumstances of any war which may be in progress. Before the acceptance of the Covenant, the basis of the law of neutrality was that the rights and obligations of neutrals were identical as regards both belligerents, and were entirely independent of the rights and wrongs of the dispute which had led to the war, or the respective position of the belligerents at the bar of world opinion.

"Now it is precisely this assumption which is no longer valid as regards states which are members of the League of Nations and parties to the Peace Pact. The effect of those instruments, taken together, is to deprive nations of the right to employ war as an instrument of national policy, and to forbid the states which have signed them to give aid or comfort to an offender."

This was being said in 1929, when there was no war upon the horizon.

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"As between such states, there has been in consequence a fundamental change in the whole question of belligerent and neutral rights. The whole policy of His Majesty's present Government (and, it would appear, of any alternative government) is based upon a determination to comply with their obligations under the Covenant of the League and the Peace Pact. This being so, the situation which we have to envisage in the event of a war in which we were engaged is not one in which the rights and duties of belligerents and neutrals will depend upon the old rules of war and neutrality, but one in which the position of the members of the League will be determined by the Covenant and by the Pact."

The Chief Prosecutor for the United States of America referred in his opening speech before this Tribunal to the weighty pronouncement of Mr. Stimson, the

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Secretary of State, in which, in 1932, he gave expression to the drastic change brought about in international law by the Pact of Paris, and it is perhaps convenient to quote the relevant passage in full:

"War between nations was renounced by the signatories of the Briand-Kellogg Pact. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engaged in armed conflict either one or both of them must be wrongdoers -- violators of this general treaty law. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead we denounce them as law-breakers."

And nearly ten years later, when numerous indipendent states lay prostrate, shattered or menaced in their very existence before the impact of the war machine of the Nazi State, the Attorney General of the United States, subsequently a distinguished member of the highest tribunal of that great country, gave significant expression to the change which had been effected in the law as the result of the General Pact of Paris, in a speech for which the freedom-loving peoples of the world will always be grateful. On the 27th of March 1941, and I mention it now not as merely being the speech of a statesman, although it was certainly that, but as being the considered opinion of a distinguished lawyer, he said this:

"The Kellogg-Briand Pact of 1928, in which Germany, Italy and Japan covenanted with us, as well as with other nations, to renounce war as an instrument of policy, made definite the outlawry of war and of necessity altered the

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dependent concept of neutral obligations.

"The Treaty for the Renunciation of War and the Argentine Anti-War Treaty deprived their signatories of the right of war as an instrument of national policy or aggression and rendered unlawful wars undertaken in violation of their provisions. In consequency, these treaties destroyed the historical and juridical foundations of the doctrine of neutrality conceived as an attitude of absolute impartiality in relation to aggressive wars.

"It follows that the state which has gone to war in violation of its obligations acquires no right to equality of treatment from other states, unless treaty obligations require different handling of affairs. It derives no right from its illegality.

"In flagrant cases of aggression where the facts speak so unambiguously that world opinion takes what may be the equivalent of judicial notice, we may not stymie International Law and allow these great treaties to become dead letters. The intelligent public opinion of thw world which is not afraid to be vocal, and the action of the American States, has made a determination that the Axis Powers are the aggressors in the wars today which is an apporpriate basis in the present state of international organization for our policy."

Thus there is no doubt that by the time the National-Socialist State of Germany had embarked upon the preparation of the war of aggression against the civilized world and by the time it had accomplished that design, aggressive war had become, in virtue of the Pact of Paris and the other treaties and declarations to which I have referred, illegal and a crime beyond all uncertainty and doubt. And it is o

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that proposition, and fundamentally on that Universal Treaty, the Briand-Kellogg Pact, that Count 2 of this Indictment is principally based.

The Prosecution has deemed it necessary -- indeed, imperative -- to establish beyond all possibility of questio at what I am afraid may appear to be excessive length, that only superficial learning or culpable sentimentality can assert that there is any significant element retroactivity in the determination of the authors of this Charter to treat aggressive war as conduct which International Law has prohibited and stigmatized as criminal. We have traced the progressive limitation of the rights of war, the renunciation and condemnation of wars of agression, and above all, the total prohibition and condemnation of all war conceived as a instrument of national policy. What statesman or politician in charge of the affairs of a nation or sharing in them could doubt, from 1928 onwards, that aggressive war, that al war, except in self-defense or for the collective enforcement of the law, or against a State which had itself violated the Pact of Paris, was unlawful and outlawed? What statesman or politician embarking upon which a war could reasonably and justifiably count upon an immunity other than that of a successful outcome of the criminal venture? What more decisive evidence of a prohibition laid down by positiv International Law could any lawyer desire than that which ha been adduced before this Tribunal?

There are, It's true, some small-town lawyers who deny the very existence of any International Law; and indeed, as I have said, the rules of the law of nations may not satisf the Austinian test of being imposed by a sovereign. But th legal relations -- the legal regulation of international relations, which is a better way in which to put it, rests

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upon quite different juridical foundations. It depends upon consent, but upon a consent which, once given, cannot be withdrawn by unilateral action. In the international field the source of law is not the command of a sovereign but the treaty agreement binding upon every state which has adhered to it. And it is indeed true, and the recognition of its truth today by all the great powers of the world is vital to our future peace -- it is indeed true that, as M. Litvinoff once said, and as Great Britain fully accepts, "Absolute Sovereignty and entire liberty of action only belong to such states as have not undertaken international obligations. Immediately a state accepts international obligations it limits its sovereignty."

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In that way and that way alone lies the future peace of the world.

Yet it may be argued that although war itself was outlawed and forbidden it wasn't criminally outlawed and criminally forbidden. International Law, it may be said, does not attribute criminality to States and still less to individuals. But can it really be said on behalf of these Defendants that the offense of these aggressive wars, which plunged millions of people to their deaths, which by dint of war crimes and crimes against humanity brought about the torture and extermination of countless thousands of innocent civilians, which devastated cities, which destroyed the amenities--nay the most rudimentary necessities of civilization in many countries, which has brought the world to the brink of ruin from which it will take generations to recover--will it seriously be said by these Defendants that such a war is only an offense, only an illegality, only a matter of condemnation perhaps sounding in damages, but not a crime justiciable by any tribunal. No law worthy of the name can allow itself to be reduced to an absurdity in that way, and certainly the Great Powers responsible for this Charter were not prepared to admit it. They draw the inescapable conclusion from the renunciation, the prohibition, the condemnation of war which had become part of the law of nations, and they refused to reduce justice to impotence by subscribing to the outworn doctrines that a sovereign state can commit no crime and that no crime can be committed on behalf of the sovereign state by individuals acting in its behalf. They refused to stultify themselves, and their refusal and their decision has decisively shaped the law of this tribunal.

If this be an innovation, it is an innovation long overdue--a desirable and beneficient innovation fully consistent with justice, fully consistent with common sense and with the abiding purposes of the law of nations. But is it indeed an innovation? Or is it no more than the logical development of the law. There was indeed a time when international lawyers used to maintain that the liability of the State, because of its sovereignty was limited to a

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contractual responsibility. International tribunals have not accepted that view. They have repeatedly affirmed that a State can commit a tort; that it may be guilty of trespass, of nuisance, and negligence. And they have gone further. They have held that a State may be bound to pay what are in effect penal damages. In a recent case decided in 1935 between the United States and Canada, an arbitral tribunal, with the concurrence of its American member, decided that the United States were bound to pay what amounted to penal damages for an affront to Canadian sovereignty. And on a wider plane, the Covenant of the League of Nations, in providing for sanctions, recognized the principle of enforcement of the law against collective units, such enforcement to be, if necessary, of a penal character. And so there is not anything startlingly new in the adoption of the principle that the State as such is responsible for its criminal acts. In fact, save for reliance on the unconvincing argument of sovereignty, there is in law no reason why a State should not be answerable for crimes committed on its behalf. A hundred years ago Dr. Lushington, a great English Admiralty Judge, refused to admit that a State couldn't be a pirate. History--very recent history--doesn't warrant the view that a State cannot be a criminal. On the contrary, the immeasurable potentialities for evil inherent in the State in this age of science and organization would seem to demand quite imperatively means of repression of criminal conduct even more drastic and more effective than in the case of individuals. And insofar, therefore, as this Charter has put on record the principle of criminal responsibility of the State, it must be applauded as a wise and far-seeing measure of international legislation.

(A recess was taken from 11.20 to 11.30 hours.)

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SIR HARTLEY SHAWCROSS: I was saying before the recess that there could be no doubt about the principle of criminal responsibility on the part of the State which engaged in aggressive war.

Admittedly, the conscience shrinks from the rigours of collective punishment, which falls upon the guilty and the innocent alike, although, it may be noted, most of these innocent victims would not have hesitated to reap the fruits of the criminal act if it had been successful. Humanity and justice will find means of mitigating any injustice of collective punishment. Above all, much hardship can be obviated by making the punishment fall upon the individuals who were themselves directly responsible for the criminal conduct of their State. It is here that the Powers who framed this charter took a step which justice, sound legal sense and an enlightened appreciation of the good of mankind must acclaim without cavil or reserve. The Charter lays down expressly that there shall be individual responsibility for the crimes, including the crime against the peace, committed on behalf of the State. The State is not an abstract entity. Its rights and duties are the rights and duties of men. Its actions are the actions of men. It is a salutary principle, a principle of law, that politicians who embark upon a particular policy of aggre ssive war should not be able to seek immunity behind the intangible personality of the State. It is a salutary legal rule that persons who, in violation of the law, plunge their own and other countries into an aggressive war should do so with a halter around their necks.

To say that those who aid and abet, who counsel and procure a crime are themselves criminals is a commonplace in our own municipal law. Nor is the principle of individual international responsibility for offenses against the law of nations altogether new. It has been applied not only to pirates. The entire law relating to war crimes, as distinct from the crime of war, is based upon the principle of individual responsibility. The future of International Law, and indeed, of the world itself, depends on its application in a much wider sphere, in particular, in that of safeguarding the peace of the

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world. There must be acknowledged not only, as in the Charter of the United Nations, fundamental human rights, but also, as in the Charter of this Tribunal, fundamental human duties, and of these none is more vital, none is more fundamental, than the duty not to vex the peace of nations in violation of the clearest legal prohibitions and undertakings. If this be an innovation, it is an innovation which we are prepared to defend and to justify, but it is not an innovation which creates a new crime. International Law had already, before the Charter was adopted, constituted aggressive war a criminal act.

There is thus no substantial retroactivity in the provisions of the Charter. It merely fixes the responsibility for a crime already clearly established as such by positive law upon its actual perpetrators. It fills a gap in international criminal procedure. There is all the difference in saying to a man, "You will now be punished for what was not a crime at all at the time you committed it," and in saying to him "You will now pay the penalty for conduct which was contrary to law and a crime when you executed it, although, owing to the imperfection of the international machinery, there was at that time no court competent to pronounce judgment against you." It is that latter course which we adopt, and if that be retroactivity, we proclaim it to be most fully consistent with that higher justice which in the practice of civilized states has set a definite limit to the retroactive operation of laws. Let the defendants and their protagonists complain that the Charter is in this matter an ex parte fiat of the victors. These victors, composing as they do, the overwhelming majority of the nations of the world, represent also the world's sense of justice, which would be outraged if the crime of war, after this second world conflict, were to remain unpunished. In thus interpreting, declaring and supplementing the existing law, these States are content to be judged by the verdict of history. Securus judicat orbis terrarum. Insofar as the Charter of this Tribunal introduces new law, its authors have established a precedent for the future — a precedent operative against all, including themselves, but in essence that law, rendering recourse to aggressive

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war an international crime, had been well established when the Charter was adopted. It is only by way of corruption of language that it can be described as a retroactive law.

There remains the question, with which I shall not detain the Tribunal for long, whether these wars were launched by Germany and her leaders in violation of treaties or agreements or assurances were also wars of aggression. A war of aggression is a war which is resorted to in violation of the international obligation not to have recourse to war, or, in cases in which war is not totally renounced, which is resorted to in disregard of the duty to utilize the procedure of the pacific settlement which a state has bound itself to observe. There was, as a matter of fact, in the period between the two world wars a divergence of opinion among jurists and statesmen whether it was preferable to attempt in advance a legal definition of aggression or to leave to the states concerned and to the collective organs of the international community freedom of appreciation of the facts in any particular situation that might arise. Those holding the latter view argued that a rigid definition might be abused by an unscrupulous State to fit in with its aggressive design; they feared, and the British Government was for a time among those who took this view, that an automatic definition of aggression might become a trap for the innocent and a signpost for the guilty. Others held that in the interest of certainty and security, a definition of aggression, like a definition of any crime in municipal law, was proper and useful. They urged that the competent international organs, political and judicial, could be trusted to avoid in any particular case a definition of aggression which might lead to obstruction or to an absurdity. In May of 1933 the Committee on Security Questions of the Disarmament Conference proposed a definition of aggression on these lines:

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"The aggressor in an international conflict shall, subject to the agreements in force between the parties to the dispute, be considered to be that State which is the first to commit any of the following actions:

"(1) declaration of war upon another State;

"(2) invasion by its armed forces, with or without a declaration of war, of the territory of another State;

"(3) attack by its land, naval, or air forces, with or without a declaration of war, on the territory, vessels, or aircraft of another State;

"(4) naval blockade of the coasts or ports of another State;

"(5) provision of support to armed bands formed in its territory which have invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take in its own territory all the measures in its power to deprive those bands of all assistance or protection."

The various treaties concluded in 1933 by the Union of Soviet Socialist Republics and other States followed closely that definition. So did the Draft Convention submitted in 1933 by His Majesty's Government to the Disarmament Conference.

However, it is unprofitable to elaborate here the details or the problems or of the definition of aggression. This Tribunal will not allow itself to be deflected from its purpose by attempts to ventilate in this Court what is an academic and in the circumstances, an utterly unreal controversy as to what is the nature of a war of aggression, for there is no definition of aggression, general or particular, which does not cover and cover abundantly and irresistably in every detail the premeditated onslaught by Germany on the territorial integrity and political independence of so many sovereign States.

This, then, being the law as we submit it to be to this Tribunal--that the peoples of the world by the Pact of Paris had finally outlawed war and made it criminal--I turn now to the facts to see how these defendants under their Leader and with their associates destroyed the high hopes of mankind and sought to revert to international anarchy. First, let this be said, for it will be established beyond doubt by the documents which you will see, from

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the moment Hitler became Chancellor in 1933, with the defendant Von Papen as Reich Chancellor, and with the defendant Von Neurath as his Foreign Minister, the whole atmosphere of the world darkened. The hopes of the people began to recede. Treaties seemed no longer matters of solemn obligation but were entered into with complete cynicism as a means for deceiving other States of Germany's war-like intentions. International conferences were no longer to be used as a means for securing pacific settlements but as occasions for obtaining by blackmail demands which were eventually to be enlarged by war. The world came to know the War of Nerves, the diplomacy of the fait accompli, of blackmail and bullying.

In October, 1933 Hitler told his Cabinet that as the proposed Disarmament Convention did not concede full equality to Germany, "It would be necessary to torpedo the Disarmament Conference. It was out of the question to negotiate: Germany would leave the Conference and the League." On the 21st of October, 1933, Germany did so and by so doing struck a deadly blow at the fabric of security which had been built up on the basis of the League Covenant. From that time on, the record of their foreign policy became one of complete disregard of international obligations, and indeed not least, of those solemnly concluded by themselves. Hitler himself expressly avowed to his confederates, "Agreements are kept only so long as they serve a certain purpose." He might have added that again and again that purpose was only to lull an intended victim into a false sense of security. So patent, indeed, did this eventually become that to be invited by the defendant Ribbentrop to enter a non-aggression pact with Germany was almost a sign that Germany intended to attack the State concerned. Nor was it only the formal treaty which they used and violated as circumstances seemed to make expedient. These defendants are charged, too, with breaches of the less formal assurances which in accordance with diplomatic usage Germany gave to neighboring States. You will hear the importance which Hitler himself publicly--publicly--attached to assurances of that kind. Today, with the advance of science, the world has been afforded means of communication and intercourse hitherto unknown, and as Hitler himself expressly recognized in his public utterances, international relations no longer depend upon treaties alone.

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The methods of diplomacy change. The leader of one nation can speak directly to the Government and peoples of another, and that course was not infrequently adopted by the Nazi conspirators. But, although the methods change, the principles of good faith and honesty, established as the fundamentals of civilized society, both in the national and international spheres, remain unaltered. It is a long time since it was said that we are part, one of another, and if today the different States are more closely connected and thus form part of a world society more than ever before, so, also, more than before, is there that need for good faith and honesty between them.

Let us see how these defendants, Ministers and High Officers of the Nazi Government, individually and collectively comported themselves in these matters.

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On the 1st of September 1939 in the early hours of the morning under manufactured and in any event inadequate pretexts, the armed forces of the German Reich invaded Poland along the whole length of her frontiers and thus launched a war which was to bring down so many of the pillars of our civilization.

It was a breach of the Hague Conventions. It was a breach of the Treaty of Versailles which had established the Frontiers between Germany and Poland. And however much Germany disliked that Treaty - although Hitler had expressly stated that he would respect its territorial provisions -- however much she disliked it -- she was not free to break it by unilateral action. It was a breach of the Arbitration Treaty between Germany and Poland concluded at Locarno on the 16th of October 1925. By that Treaty Germany and Poland expressly agreed to refer any matters of dispute not capable of settlement by ordinary diplomatic machinery to the decision of an Arbitral Tribunal or of the Permanent Court of International Justice. It was a breach of the Pact of Paris. But that is not all. It was also a breach of a more recent and, in view of the repeated emphasis laid upon it by Hitler himself, in some ways a more important engagement into which Nazi Germany had entered with Poland. After the Nazi Government came into power on the 26th of January 1934 the German and Polish Governments had signed a ten year Pact of Non-aggression. It was, as the signatories themselves stated, to introduce a new era into the political relations between Poland and Germany. It was said in the text of the Pact itself that "the maintenance and guarantee of lasting Peace between the two countries is in essential prerequisite for the general peace of Europe". The two Governments therefore agreed to base their mutual relations on the principles laid down in the Pact of Paris, and they solemnly declared that:

"In no circumstances... will they proceed to the application of Force for the purpose of reaching a decision in such disputes".

That declaration and agreement was to remain in force for at least ten years and thereafter it was to remain valid unless it was denounced by either Government six months before the expiration of the ten years, or subsequently by six months' notice.

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Both at the time of its signature and during the following four years Hitler spoke of the German-Polish Agreement publicly, publicly as though it were a corner-stone of his foreign policy. By entering into it he persuaded many people that his intentions were genuinely pacific, for the re-emergence of an new Poland and independant Poland after the war had cost Germany much territory and had separated

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East Prussia from the Reich; and that Hitler should, of his own accord, enter into friendly relations with Poland; that in his speeches on foreign policy he should proclaim his recognition of Poland and of her right to an exit to the sea, and the necessity for Germans and Poles to live side by side in amity. These facts seemed to the world to be convincing proof that Hitler had no "revisionist" aims which would threaten the peace of Europe; that he was even genuinely anxious to put an end to the age-old hostility between the Teuton and the Slav. If his professions were, as embodied in the Treaty and as contained in these declarations, genuine, his policy excluded a renewal of the Drang nach Osten, as it had been called, and was thereby going to contribute to the peace and stability of Europe. That was what the people were led to think. We shall have occasion enough to see how little truth these pacific professions in fact contained.

The history of these fateful years from 1934 to 1939 shows quite clearly that the Germans used this Treaty, as they used other Treaties, merely as an instrument of policy for furthering their aggressive aims. It is clear from the documents which will be presented to the Tribunal that these five years fall into two distinct phases in the realisation of the aggressive aims which always underlay the Nazi policy. There was first the period from the Nazi assumption of power in 1933 until the autumn of 1937. That was the preparatory period. During that time there occurred the breaches of the Versailles and Locarno Treaties, the feverish rearmament of Germany, the reintroduction of conscription, the reoccupation and remilitarisation of the Rhineland, and all those other necessary preparatory measures for future aggression which my American colleagues have already so admirably put before the Tribunal.

During that period--the preparatory period--Germany was lulling Poland into a false sense of security. Not only Hitler, but the Defendant Goering and the Defendant Ribbentrop made statements approbating the non-agression pact. In 1935 Goering was saying that "the pact was not planned for a period of ten years but for ever; there need not be the slightest fear that it would not be continued." Even though Germany was steadily building up the greatest war machine that Europe had ever known, and although, by January 1937, the

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German military position was so strong and so secure that in spite of the Treaty breaches which it involved Hitler could openly refer to his strong army, he took pains, at the same time, to say--and again I quote--that "by a series of agreements we have eliminated existing tensions and thereby contributed considerably to an improvement in the European atmosphere. I merely recall the agreement with Poland which has worked out to the advantage of both sides."

And so it went on: abroad, protestations of pacific intentions; at home, "guns before butter."

In 1937 this preparatory period drew to a close and Nazi policy moved from general preparation for future aggression to specific planning for the attainment of certain specific aggressive aims. And there are two documents in particular which mark that change.

The first of these was called "Directive for unified preparation for War", issued in June 1937--June 29, 1937--by the Reich Minister for war, who was then von Blomberg, Commander in Chief of the Armed Forces. That document is important, not only for its military directions, but for the appreciation it contained of the European situation and for the revelation of the Nazi attitude towards it.

"The general political position," von Blomberg stated--I am quoting from the document--"justifies the supposition that Germany need not consider an attack from any side. Grounds for this are, in addition to the lack of desire for war in almost all nations, particularly the Western Powers, the deficiencies in the preparedness for war of a number of States, and of Russia in particular."

It is true, he added: "The intention of unleashing a European war is held just as little by Germany." And it may be that that phrase was carefully chosen because, as the documents will show, Germany hoped to conquer Europe, perhaps to conquer the world in detail; to fight on one front at a time, against one power at a time, and not to unleash a general European conflict.

But von Blomberg went on: "The politically fluid world situation, which does not preclude surprising incidents, demands a continuous preparedness for

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war of the German Armed Forces (a) to counter attack at any time"--yet he had just said that there was no fear of any attack--"and (b)"--and I invite the Tribunal again to notice this phrase--"to enable the military exploitation of politically favorable opportunities should they occur."

That phrase is no more than a euphemistic description of aggressive war. It reveals the continued adherence of the German military leaders to the doctrine that military might, and if necessary war, should be an instrument of policy--the doctrine which had been explicitly condemned by the Kellogg Pact, which was renounced by the Pact with Poland, and by innumerable other Treaties.

The document goes on to set out the general preparations necessary for a possible war in the mobilization period of 1937-1938. It is evidence at least for this, that the leaders of the German Armed Forces had in mind to use the military strength which they were building up for aggressive purposes. "No reason", they say, "to anticipate attack from any side...there is a lack of desire for war." Yet they prepare to "exploit militarily favorable opportunities."

Still more important as evidence of the transition to planned aggression

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is the record of the important conference which Hitler held at the Reichs Chancellery on the 5th of November 1937, at which von Blomberg, Reich Minister for War, von Fritsch, the Commander in Chief of the Army, Goering, Commander in Chief of the Luftwaffe, Raeder, the Commander in Chief of the Navy, and von Neurath, then the Foreign Minister, were present. The minutes of that conference have already been put in evidence. I refer to them now only to emphasize those passages which make apparent the ultimate intention to wage an aggressive war. You will remember that the burden of Hitler's argument at that conference was that Germany required more territory in Europe. Austria and Czechoslovakia were specifically envisaged. But Hitler realized that the process of conquering those two countries might well bring into operation the treaty obligations of Great Britain and of France. He was prepared to take the risk. You remember the passage:

"The history of all times: Roman Empire, British Empire has proved that every space expansion can only be effected by breaking resistance and taking risks. Even setbacks are unavoidable: neither formerly nor today has space been found without an owner. The attacker always comes up against the proprietor. The question for Germany is where the greatest possible conquest can be made at the lowest possible cost

In the course of that Conference, Hitler had foreseen and discussed the likelihood that Poland would be involved if the aggressive expansionist aims which he put forward brought about a general European war in the course of their realization by the Nazi State. And when, therefore, on that very day on which that conference was taking place, Hitler assured the Polish Ambassador of the great value of the 1934 Pact with Poland, it can only be concluded that its real

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value in Hitler's eyes was that of keeping Poland quiet until Germany had acquired such a territorial and strategic position that Poland was no longer a danger.

That view is confirmed by the events which followed. At the beginning of February of 1938 the change from Nazi preparation or aggression to active agression itself took place. It was marked by the substitution of Ribbentrop for Neurath as Foreign Minister, and of Keitel for Blomberg as head of the OKW. Its first fruits were the bullying of Schuschnigg at Berchtesgaden on February 12, 1938, and the forcible absorption of Austria in March. Thereafter, the Green Plan for the destruction of Czechoslovakia was steadily developed in the way which you heard yesterday -- the plan partially foiled, or of which the final consummation was at least delayed, by the Munich Agreement.

With those aspects, those developments of Nazi aggression my American colleagues have already dealt. But it is obvious that the acquisition of these two countries, their resources in manpower, their resources in the production of munitions of war, immensely strengthened the position of Germany as against Poland. And it is, therefore, perhaps not surprising that just as the Defendant Goering assured the Czechoslovak Minister in Berlin, at the time of the Nazi invasion of Austria, that Hitler recognized the validity of the German-Czechoslovak Arbitration Treaty of 1925, and that Germany had no designs

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against Czechoslovakia herself -- you remember, "I give you my word of honour," the Defendant Goering said. Just as that is not surprising, so also it is not perhaps surprising that continued assurances should have been given during 1938 to Poland in order to keep that country from interfering with the Nazi aggression on Poland's neighbors.

Thus, on the 20th of February of 1938, on the eve of his invasion of Austria, Hitler, referring to the fourth anniversary of the Polish Pact, permitted himself to say this to the Reichstag -- and I quote: ". . . and so a way to a friendly understanding has been successfully paved, an understanding which beginning with Danzig has today succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere friendly co-operation. Relying on her friendships, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task ahead of us - Peace."

Still more striking, perhaps, are the cordial references to Poland in Hitler's speech inthe Sportpalast at Berlin on the 26th of September, 1938. He then said: "The most difficult problem with which I was confronted was that of our relations with Poland. There was a danger that Poles and Germans would regard each other as hereditary enemies. I wanted to prevent this. I know well enough that I should not have been successful if Poland had had a democratic constitution. For these democracies which indulge in phrases about peace are the most bloodthirsty war agitators. In Poland there ruled no democracy, but a man: and with him I succeeded, in precisely twelve months, in coming to an agreement which, for ten years in the first instance, entirely removed the danger of a conflict. We are all convinced that this agreement will bring lasting pacification. We realize that here are two peoples which must live together and neither of which can do away with the other.

A people of 33 millions will always strive for an outlet to the sea. A way for understanding then had to be found, and it will be further extended. Certainly things were hard in this area. But the main fact is that the two Governments, and all reasonable and clear-sighted persons among the two peoples within the two countries, possessthe firm will and determination to improve their relations. It was a real work of peace, of more worth than all the chattering in the League of Nations Palace at Geneva."

And so flattery of Poland preceded the annexation of Austria and renewed flattery of Poland preceded the projected annexation of Czechoslovakia. The realities behind these outward expressions of goodwill are clearly revealed in the documents relating to the Fall Gruen, which are already before the Tribunal. They show Hitler as fully aware that there was a risk of Poland, England, and France being involved in war to prevent the German annexation of Czechoslovakia, and that this risk, although it was realized, was also accepted. On the 25 August of 1938 top secret orders to the German Air Force in regard to the operations to be conducted against England and France, if they intervened, pointed out that, as the Franco-Czechoslovak Treaty provided for assistance only in the event of an "unprovoked" attack, it would take a day or two for France and England, and I suppose the lawyers, to decide whether legally the attack had been unprovoked or not, and subsequently, a blitzkrieg accomplishing its aims before there could be any effective intervention by France or England was the object to be aimed at.

On the same day an Air Force memorandum on future organization was issued, and to it there was attached a map on which the Baltic States, Hungary, Czechoslovakia, and Poland were all shown as part of Germany, and preparations for expanding the Air Force, and I quote, "as the Reich grows in area", as well as dispositions for a two-front war against France and Russia were discussed. And on the following day Von Ribbentrop was being minuted about the reaction of Poland towards the Czechoslovak problem. I quote: "The fact that after the liquidation of the Czech question it will be generally assumed that Poland will be next in turn" is reconized, but it stated, "The later this assumption sinks in, the better."

I will pause for a moment at the date of the Munich Agreement and ask the Tribunal to remind itself of what the evidence of documents and historical facts shows up to that day. It has made undeniable both the fact

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of Nazi aggressiveness and of active and actual aggression. Not only does that conference of 1937 show Hitler and his associates deliberately considering the acquisition of Austria and Czechoslovakia, if necessary by war, but the first of the operations had been carried through in March of 1938, and a large part of the second, under threat of war, a threat as we now see which was much more than a bluff - a threat of actual and real war, although without the actual need for its initiation, secured, as I said, a large part of the second objective in September of 1938. And more ominous still, Hitler had revealed his adherence to the old doctrines of "Mein Kampf" long regarded as the bible of the Nazi Party we shall draw attention in certain particular passages. Hitler is indicating quite clearly to not only his associates, but indeed to the world at this time, that he is in pursuit of "Lebensraum" and that he means to secure it by threat of force, or if threat of force fails, by actual force - by aggressive war.

So far actual warfare had been avoided because of the love of peace, the lack of preparedness, the patience, the cowardice - call it what you will - of the democratic Powers, but after Munich the question which filled the minds of all thinking people with acute anxiety was "where will this thing end? Is Hitler now satisfied as he declared himself to be? or is his pursuit of lebensraum going to lead to future aggressions, even if he has to embark on open, aggressive war to secure it?"

It was in relation to the remainder of Czechoslovakia and to Poland that the answer to these questions was to be given. So far, up to the time of the Munich Agreement, no direct and immediate threat to Poland had been made. The two documents from which I have just quoted, show of course, that high officers of the Defendant Goering's Air Staff had already re[illegible] the extension of the Reich and, it would seem, the destruction and absorption of Poland, as a foregone conclusion. They were already anticipating, indeed, the last stage of Hitler's policy as expounded in "Mein Kampf" - war to destroy France and to secure lebensraum in Russia. And the writer of the Minute to Ribbentrop already took it for granted that, after Czechoslovakia, Poland would be attacked. But more impressive than those two documents is the fact that, as I have said, at the conference

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of November 5 of 1937 war with Poland, if she should dare to prevent German aggression against Czechoslovakia, had been quite coolly and calmly contemplated, and the Nazi leaders were ready to take the risk. So also had the risk of war with England and France under the same circumstances been considered and accepted. As I indicated, such a war would, of course, have been aggressive war on Germany's part, and they were contemplating aggressive warfare to force one state to take up arms to defend another state against aggression, in other words, to fulfill its treaty obligations to initiate aggressive warfare against the first state. But in spite of thos plans, in spite of these intentions behind the scenes, it remains true that until Munich the decision for direct attack upon Poland and her destruction by aggressive war had apparently not yet been taken by Hitler and his associates. It is to the transition from the intention and preparation of initiating aggressive war evident in regard to Czechoslovakia to the actual initiation and waging of aggressive war against Poland that I now pass. That transition occupies the eleven months from October 1 of 1938 to the actual attack on Poland on the 1st of September 1939.

Within six months of the signature of the Munich Agreement the Nazi leaders had occupied the remainder of Czechoslovakia, which by that agreement they had indicated their willingness to guarantee. On the 14th March 1939 the aged and infirm president of the "Rump" of Czechoslovakia Hacha and his foreign minister were summoned to Berlin. At a meeting held between one o'clock and two-fifteen in the small hours of the 15th of March in the presence of Hitler, of the defendants Ribbentrop, Goering and Keitel, they were bullied and threatened and even bluntly told that Hitler had issued the orders for the German troops to move into Czechoslovakia and for the incorporation of Czechoslovakia into the German Reich.

It was made quite clear to them that resistance would be useless and would be crushed "by force of arms with all available means", and it was thus that the Protectorage of Bohemia and Moravia was set up and that Slovakia was turned into a German satellite, though nominally an independant sate. By their own unilateral action, on pretexts which had no shadow of validity, without discussion

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with the governments of any other country, without mediation, and in direct contradiction of the sense and spirit of the Munich agreement, the Germans acquired for themselves that for which they had been planning in September of the previous year, and indeed much earlier, but which at that time they had felt themselves unable completely to secure without too patent an exhibition of their aggressive intentions. Aggression achieved whetted the appetite for aggression to come. There were protests. England and France sent diplomatic notes. Of course, there were protests. The Nazis had clearly shown their hand. Hitherto they had concealed from the outside world that their claims went beyond incorporating into theReich p rsons of German race living in bordering territory. Now for the first time, in defiance of their solemn assurances to the contrary, non-German territory and non-German people had been seized. This acquisition of the whole of Czechoslovakia, together with the equally illegal occupation of Memel Land on the 22nd of March 1939 resulted in an immense strengthening of the German positions both politically and strategically, as Hitler had anticipated it would when he discussed the matter at that conference in November of 1937.

But long before the consummation by the Nazi leaders of their aggression against Czechoslovakia, they had begun to make demands upon Poland. The Munich settlement achieved on the 25th of October 1938, that is to say, within less than a month of Hitler's reassuring speech about Poland which I have already referred to and within, of course, a month of the Munich agreement, M. Lipski, the Polish Ambassador in Berlin, reported to M. Beck, the Polish foreign minister, that at a luncheon at Berchtesgaden the day before, that is to say, on October 24, 1938, the Defendant Ribbentrop had put forward demands for the reunion of Danzig with the Reich and for the building of an extra-territorial motor road and railway line across Pomorze, that is the province which the Germans called the Corridor. From that moment onwards until the Polish Government had made it plain, as they did during a visit of the Defendant Ribbentrop to Warsaw in January,

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1939, that they would not consent to hand over Danzig to German sovereignty negotiations on these German demands continued. And even after Ribbentrop's return from the visit to Warsaw, Hitler thought it worthwhile in his Reichstag Speech on the 30th of January 1939 to say: "We have just celebrated the fifth anniversary of the conclusion of our non-aggression pact with Poland. There can scarcely be any difference of opinion today among the true friends of peace as to the value of this agreement. One only needs to ask oneself what might have happened to Europe if this agreement, which brought such relief, had not been entered into five years ago. In signing it the great Polish marshal and patriot rendered his people just as great a service as the leaders of the National-Socialist State rendered the German people. During the troubled months of the past year the friendship between Germany and Poland has been one of the reassuring factors in the political life of Europe."

But that utterance was the last friendly word from Germany to Poland, and the last occasion on which the Nazi Leaders mentioned the German-Polish Agreement with approbation. During February 1939 silence fell upon German demands in relation to Poland. But as soon as the final absorption of Czechoslovakia had taken place, and Germany had also occupied Memel, Nazi pressure upon Poland was at once renewed.

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In two conversations between himself and the Defendant Ribbentrop, held on the 21st of March and the 26th of March respectively, with the Polish Ambassador, German demands upon Poland were renewed and were further pressed. And in view of the fate which had overtaken Czechoslovakia, in view of the grave deterioration in her strategical position towards Germany, it is not surprising that the Polish Government took alarm at the developments. Nor were they alone. The events of March 1939 had them at last convinced, both the English and the French Governments, that the Nazi designs of aggression were not limited to men of German race, and that the spectre of European war resulting from further aggressions by Nazi Germany had not after all been exorcised by the Munich Agreement.

As a result therefore of the concern of Poland, and of England and of France, at the events in Czechoslovakia, and at the newly applied pressure on Poland, conversations between the English and Polish Governments had been taking place, and on the 31st of March, 1939, Mr. Neville Chamberlain, speaking in the House of Commons, stated that His Majesty's Government had given an assurance to help Poland in the event of any action which clearly threatened Polish independence and which the Polish Government accordingly considered it vital to resist. On the 6th of April, 1939, an Anglo-Polish communique stated that the two countries were prepared to enter into an Agreement of a permanent and reciprocal character to replace the present temporary and unilateral assurance given by His Majesty's Government.

The justification for that concern on the part of the democratic powers was not difficult to find. With the evidence which we now have of what was happening within the Councils of the German Reich and its Armed Forces during these months it is manifest that the German Government were intent on seizing Poland as a whole, that Danzig--as Hitler himself was to say in time, a month later--"was not the subject of the dispute at all." The Nazi Government was intent upon aggression and the demands and negotiations

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in respect of Danzig were merely a cover and excuse for further domination.

Would that be a convenient point to stop?

THE PRESIDENT: We will adjourn now until 2 o'clock.

(Whereupon at 12.55 hours the Hearing of the Tribunal adjourned, to reconvene at 14.00 hours.)

File copy

Official transcript of the International Military Tribunal, in the matter of: The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nürnberg, Germany, on 4 December, 1945, 1400-1630, Lord Justice Lawrence presiding.

THE PRESIDENT: Before the Attorney General continues his opening statement, the Tribunal wishes me to state the proposed new time of sitting for the immediate future. They think it would be more convenient that the Tribunal shall sit from 10:00 o'clock in the morning until 1:00 o'clock, with a break of ten minutes in the middle of the morning; and that the Tribunal should sit in the afternoon from 2:00 o'clock until 5:00 o'clock, with a break for ten minutes in the middle of the afternoon; and that there should be no open sitting of the Tribunal on Saturday morning as the Tribunal has a very large number of applications by the Defendants' counsel for witnesses and documents and other matters of that sort which it has to consider.

SIR HARTLEY SHAWCROSS: May it please the Tribunal, when we broke off I had been saying that the Nazi Government was intent upon aggression, and all that had been taking place in regard to Danzig, the negotiations, the demands that were being made, was really no more than a cover, a pretext, and excuse for further domination.

As far back as September 1938 plans for aggressive war against Poland, England and France were well in hand. While Hitler, at Munich, was telling the world that the German people wanted peace and that, having solved the Czechoslovakian problem, Germany had no more territorial problems in Europe, the staffs of his armed forces were already preparing their plans. On the 26th of September 1938 he had stated:

"We have given guarantees to the States in the West. We have

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assured all our immediate neighbours of the integrity of their territory as far as Germany is concerned. That is no mere phrase. It is our sacred will. We have no interest whatever in a breach of the peace. We want nothing from these peoples."

And the world was entitled to rely on those assurances. International cooperation is utterly impossible unless one can assume good faith in the leaders of the various States and honesty in the public utterances that they make. But, in fact, within two months of that solemn and considered undertaking, Hitler and his confederates were preparing for the seizure of Danzig. To recognize those assurances, those pledges, those diplomatic moves as the empty frauds that they were, one must go back to inquire what was happening within the inner councils of the Reich from the time of the Munich Agreement.

Written some time in September 1938 is an extract from a file on the Reconstruction of the German Navy. Under the heading "Opinion on the Draft Study of Naval Warfare against England", this is stated:

"1. If, according to the Fuehrer's decision Germany is to acquire a position as a world power, she needs not only sufficient colonial possessions but also secure naval communications and secure access to the ocean.

"2. Both requirements can only be fulfilled in opposition to Anglo-French interests and would limit their position as world powers. It is unlikely that they can be achieved by peaceful means. The decision to make Germany a world power, therefore, forces upon us the necessity of making the corresponding preparations for war.

"3. War against England means at the same time war against the Empire, against France, probably against Russia as well, and a large number of countries overseas, in fact, against half to one-third of the world.

"It can only be justified and have a chance of success"--and it

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was not moral justification which was being looked for in this document--"It can only be justified and have a chance of success if it is prepared economically as well as politically and militarily and waged with the aim of conquering for Germany an outlet to the ocean."

THE PRESIDENT: I think the Tribunal would like to know at what stage you propose to put the documents which you are citing in evidence.

SIR HARTLEY SHAWCROSS: Well, sir, my colleagues, my American and my British colleagues, were proposing to follow up my own address by putting these documents in. The first series of documents, which will be put in by my noted colleague, Sir David-Maxwell Fyfe, will be the Treaties.

THE PRESIDENT: I suppose that what you quote will have to be read again.

SIR HARTLEY SHAWCROSS: Well, I am limiting my quotations as far as I possibly can. I apprehend that technically you may wish it to be quoted again so as to get it on the record when the document is actually put into evidence. But I think it will appear, when the documents themselves are produced, that there will be a good deal more in most of them than I am actually citing now.

THE PRESIDENT: Yes. Very well.

SIR HARTLEY SHAWCROSS: This document on naval warfare against England is something which is both

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significant and new. Until this date the documents in our possession disclose preparations for war against Poland, England and France, purporting on the face of them at least to be defensive measures to ward off attacks which might result from the intervention of those states in the preparatory German aggressions in Central Europe. Hitherto aggressive war against Poland, England and France has been contemplated only as a distant objective. Now, in this document for the first time we find a war of conquest by Germany against France and England openly recognized as the future aim, at least of the German Navy.

On the 24 November 1938, an appendix was issued by Keitel to a previous order of the Fuehrer. In that appendix were set out the future tasks for the armed forces and the preparation for the conduct of the war which would result from those tasks:

"The Fuehrer has ordered"--and I quote--"that besides the three eventualities mentioned in the previous Directive preparations are also to be made for the surprise occupation by German troops of the Free State of Danzig.

"For the preparation the following principles are to be borne in mind: The primary assumption is the lightning seizure of Danzig by exploiting a favorable political situation and not war with Poland. Troops which are going to be used for this purpose must not be held at the same time for the seizure of Memel-land, so that both operations can take place simultaneously should such necessity arise."

Thereafter, as the evidence which is already before the Tribunal has shown, final preparations for the invasion of Poland were taking place. On the 3rd of April 1939, three days before the issue of the Anglo-Polish communique, Keitel issued to the High Command of the Armed Forces a Directive for the uniform preparation of war by the armed forces in 1939-1940 was being re-issued and that part relating to Danzig would be out in April. The basic principles were to remain the same as in the previous Directive. Attached to this document were the orders "Fall Weiss", the code name for the proposed invasion of Poland. Preparations for that invasion were to be made, it was stated, so that the operation could be

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carried out at any time from the 1st September 1939 onwards.

On the 11th of April Hitler issued his directive for the uniform preparation of the war by the armed forces, 1939-40, and in it he said:

"I shall lay down in a later Directive fu ure tasks of the armed forces and the preparations to be made in accordance with these for the conduct of war. Until that Directive comes into force the armed forces must be prepared for the following eventualities:

"1. Safeguarding of the frontiers.

"2. 'Fall Weiss'.

"3. The annexation of Danzig.

Then in an annex to that document, which bore the heading "Political Hypotheses and Aims" it was stated that quarrels with Poland should be avoided. But, should Poland change her policy and adopt a threatening attitude towards Germany, a final settlement would be necessary, notwithstanding the Polish Pact. The Free City of Danzig was to be incorporated into the Reich at the outbreak of the conflict at the latest. The policy aimed at limiting the war to Poland, and this was considered possible at that time with the internal cris s in France and resulting British restraint.

The wording of that document--and the Tribunal will study the wording of it--doesn't involve the intention of immediate aggression. It is a plan of attack "if Poland changes her policy and adopts a threatening attitude". But the picture of Poland, with her wholly inadequate armaments threatening Germany, now armed to the teeth, is ludicrous enough, and the real aim of the document emerges in the sentence--and I quote: "The aim is then to destroy Polish military strength and to create, in the East, a situation which satisfies the requirements of defence"--a sufficiently vague phrase to cover designs of any magnitude. But even at that stage the evidence doesn't suffice to prove that the actual decision to attack Poland on any given date had yet been taken. All the preparations were being set in train. All the necessary action was being proceeded with in case that decision should be reached.

It was within three weeks of the issue of that last document that Hitler addressed the Reichstag on the 28th of April 1939. In that speech

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he repeated the demand which had already been made upon Poland, and proceeded to denounce the German-Polish Agreement of 1934. Leaving aside for the moment the warlike preparations for aggression, which Hitler had set in motion behind the scenes, I will ask the Tribunal to consider the nature of this denunciation of an agreement to which, in the past, Hitler had attached such importance.

In the first place, of course, Hitler's denunciation was per se ineffectual. The text of the Agreement made no provision for its denunciation by either party until a period of ten years had come to an end. No denunciation could be legally effective until June or July of 1934, and here was Hitler speaking in

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April of 1939, more than five years too soon.

In the second place, Hitler's actual attack upon Poland when it came on September 1, was made before the expiration of the six months period after denunciation required by the Agreement before any denunciation could be operative. And in the third place, the grounds for the denunciation stated by Hitler in his speech to the Reichstag are entirely specious. However one reads its terms it is impossible to take the view that the Anglo-Polish guarantee of mutual assistance against aggression could render the German-Polish Pact null and void, as Hitler sought to suggest. If that had been the effect of the Anglo-Polish assurances, then certainly the Pacts which had already been entered into by Hitler himself with Italy and with Japan had already invalidated the treaty with Poland. Hitler might have spared his breath. The truth is, of course, that the text of the German-Polish Agreement, text of the assurances, contains nothing whatever to support the contention that the German-Polish Pact was in any way interfered with.

Why then did Hitler make this trebly invalid attempt to denounce his own pet diplomatic child? Is there any other possible answer but that, the Agreement having served its purpose, the grounds which he chose for its denunciation were chosen merely in an effort to provide Germany with some kind of justification, at least for the German People, for the aggression on which the German leaders were intent.

Of course Hitler sorely needed some kind of justification, some apparently decentexcuse, since nothing happened, and nothing seemed likely to happen from the Polish side to provide him with any kind of pretext for invading Poland. So far he had made demands upon his Treaty partner which Poland as a sovereign State had every right to refuse. If dissatisfied with that refusal Hitler was bound, under the terms of the agreement itself, to seek a settlement -- I will read the words in the pact, "To see a settlement through other peaceful means, without prejudice to the possibility of applying those methods of procedure, in case of necessity, which are provided for such a case in the other agreements between them that are in force." And that presumably was with reference to the German-Polish Arbitration Treaty signed at Locarno in 1925.

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The very fact therefore, that as soon as the Nazi leaders cannot get what they want, but are not entitled to, from Poland by merely asking for it, and that, on their side they made no further attempt to settle the dispute "By peaceful means" in accordance with the terms of the Agreement, and of the Kellogg Pact, to which the Agreement pledged both Parties, because in itself it created a stronger presumption of aggressive intentions against Hitler and his associates. That presumption becomes a certainty when the documents which I am about to call the attention of the Tribunal to are studied.

On the 10th of May Hitler issued an order for the capture of economic installations in Poland, and on the 16th of May the defendant Raeder, as Commander in Chief of the Navy, issued a memorandum setting out the Fuehrer's instructions to prepare for the operation "Fall Weiss" at any time from the 1st September 1939.

But the decisive document is the record of the Conference held by Hitler on May 23, 1939, with various high-ranking officers, including the defendants Goering, Raeder and Keitel. The details of the whole document will have to be read to the Tribunal later. I am merely summarizing the substantial effect of this part of it now. Hitler then stated that the solution of the economic problems with which Germany was set at first could not be found without invasion of foreign States and attacks on foreign property. Danzig, and I am quoting, "Danzig is not the subject of the dispute of Poland. It is a question of expanding our living space in the East. There is, therefore, no question of sparing Poland, and we are left with the decision: to attack Poland at the earliest opportunity. We cannot expect a repetition of the Czech affair. There will be war. Our task is to isolate Poland. The success of this isolation will be decisive. The isolation of Poland is a matter of skillful politics."

So he explained to his confederates. He anticipated the possibility that war with England and France might result, but a two front war which was to be avoided if possible, yet, England was recognized, I say with pride, as the most dangerous enemy which Germany had. England, he said, I quote,

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"England is the driving force against Germany, the aim will always be to force England to her knees." More than once he predicted that the war with England and France would be a life and death struggle. All the same," he concluded, "Germany will not be forced into war but she would not be able to avoid one."

On the 14th of June, 1939, General Blaskowitz, then Commander in Chief of the 3rd Army Group, issued a detailed battle plan for the "Fall Weiss". The following day von Brauchitsch issued a memorandum in which it was stated that the object of the impending operation was to destroy the Polish Armed Forces. "High Policy demands, " he said, "High

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Policy demands that the war should be begun by heavy surprise blows in order to achieve quick results." The preparations proceeded apace. On the 22nd June Keitel submitted a preliminary time table for the operation which Hitler seems to have approved and suggested that the scheduled maneuver must be camouflaged -- must be camouflaged "In order not to disquiet the population." On the 3rd of July Brauchitsch wrote to Raeder urging that certain preliminary naval moves should be abandoned in order not to prejudice the surprise of the attack. On the 12th and 13th August Hitler and Ribbentrop had a conference with Ciano, the Italian Foreign Minister.

It was a conference with which the Tribunal will have to be referred from several points of view. I summarize now what is the Blaskowitz matter: At the beginning of the conversation Hitler emphasized the strength of the German position, of the German western and eastern fortifications, and of the strategic and other advantages that they held in comparison with those of England, France and Poland. Now I quote from the captured document this, Hitler said this:

"Since the Poles through their whole attitude had made it clear that in any case in the event of a conflict they would stand on the side of the enemies of Germany and Italy, a quick liquidation at the present moment could only be of advantage for the unavoidable conflict with the western democracies. If a hostile Poland remained on Germany's eastern frontier, not only would the eleven East Prussian divisions be tied down, but also further contingents would be kept in Pomerania and Silesia. This would not be necessary in the event of a previous liquidation." Then this: "Generally speaking, the best thing to happen would be for the neutrals to be liquidated one after the other. This process could be carried out more easily if on every occasion one partner of the Axis covered the other while it was dealing with an uncertain neutral. Italy might well regard Yugoslavia as a neutral of that kind."

Ciano was for postponing the operation. Italy was not ready. She believed that a conflict with Poland would develop into a general European war. Mussolini was convinced that conflict with the Western

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democracies was inevitable, but he was making plans for a period two or three years ahead. But that the Fuehrer said that the Danzig question must be disposed of one way or the other by the end of August. I quote "He had, therefore, decided to use the occasion of the next Polish provocation in the form of an ultimatum."

On the 22nd of August Hitler called his Supreme Commanders together at Obersalzburg, and gave the order for the attack: In the course of what he said he made it clear that the decision to attack had in fact been made not later than the previous spring. He would give a spurious cause for starting the war. At that time the attack was timed to take place in the early hours of the 26th of August. On the day before, the 25th of August, the British Government, in the hope that Hitler might still be reluctant to plunge the world into war, and in the belief that a formal treaty would impress him more than the informal assurances which had been given previously, entered into an agreement, or expressed agreement for mutual assistance with Poland, embodying the previous assurances, that had been given earlier in the year. It was known to Hitler that France was bound by the Franco-Poland Treaty of 1921, and that that of the Guarantee pact signed at Locarno in 1925 to intervene in Poland's favor in case of aggression, and for a moment Hitler hesitated. The defendants Goering and Ribbentrop in the interrogations which you will see in the future, agreed that it was the Anglo-Polish Treaty which led them to call off or rather postpone the attack, which was timed for 26. Perhaps he hoped that after all there was still some chance of repeating what he had called the Czech affair. If so, his thoughts were shortlived. On the 27th of August Hitler accepted Mussolini's decision not at once to come into the war, but asked for propaganda support, and a display of military activities on the part of Italy so as to create uncertainty in the minds of the Allies. Ribbentrop on the same day said that the Armies were marching.

In the meantime, of course, and particularly during the last month, desperate attempts were being made by the Western Powers to avert war. You will have details of them in evidence. Of the intervention of the Pope. Of President Roosevelt's message. Of the offer

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by the British Prime Minister to do our utmost to create the conditions in which all matters in issue could be the subject of free negotiations, and to guarantee the resultant decisions. But this and all the other efforts of honest men to avoid the horror of a European conflict were pre-destined to failure. The Germans were determined that the day for war had come. On the 31st August Hitler issued a top secret order for the attack to commence in the early hours of the 1st September.

The necessary frontier incidents duly occurred. Was it, perhaps, for these that Keitel had been instructed by Hitler to supply Heydrich with Polish uniforms, and so without a declaration of war, without even giving the Polish Government an opportunity of seeing Germany's final demands, and you will hear the evidence of the extra-ordinary diplomatic negotiations, if one can call it such, that took place in Berlin, without giving Poland any opportunity at all of negotiating or arbitrating demands which Nazi Germany was making, the Nazi troops invaded Poland.

On the 3rd of September Hitler sent a telegram to Mussolini thanking him for his intervention but pointing out that the war was inevitable and that the most promising moment had to be picked after cold deliberation. And so Hitler and his confederates now before this Tribunal began the first of their wars of aggression for which they had prepared so long and so thoroughly. They waged it so fiercely that within a few weeks Poland was overrun.

On the 23rd November 1939, Hitler reviewed the situation to his military Commanders and in the course of what he said he made this observation:

"One year later Austria came; this step was also considered doubtful. It brought about a tremendous reinforcement of the Reich. The next step was Bohemia, Moravia and Poland. This step also was not possible to accomplish in one campaign. First of all the Western fortifications had to be finished. Then followed the creation of the Protectorate, and with that the basis of action against Poland was laid. But I was not quite clear at the time whether I should start first against

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the East, and then in the West, or vice versa. The decision came to fight with Poland first. One might accuse me of wanting to fight again and again. In struggle, I see the fate of all human beings."

He was not sure when to attack first. But that sooner or later he would attack bears out it was in the East, but not in the West, so was never in doubt, and he had been warned not only by the British and French Prime Ministers but even by his confederate Mussolini that an attack on Poland would bring England and France into the war. He chose what he thought was the opportune moment, and he struck.

Under the circumstances the intent to wage war against England and France, and to precipitate it by an attack on Poland, is not to be denied. Here was defiance of the most solemn treaty obligations. Here was neglect of the most pacific assurances. Here was aggression, naked and unashamed, which was indeed to arouse the horrified and heroic resistance of all civilized peoples, but which was to tear down many of the pillars of our civilization.

H0014-0059

Once started upon the active achievement of their plan to secure the domination of Europe, if not of the world, theNazi Government proceeded to attack other countries, as occasion offered. The first actually to be attacked, actually to be invaded after the attack upon Poland were Denmark and Norway.

On the 9th of April 1940 the German Armed Forces invaded Norway and Denmark without any warning, without any declaration of war. It was a breach of the Hague Convention of 1907. It was a breach of the Convention of Arbitration and Conciliation signed between Germany and Denmark dated 2nd June, 1926. It was, of course, a breach of the Briand-Kellogg Pact of 1928. It was a violation of the non-aggression Treaty between Germany and Denmark made on the 31st of May 1939. And it was a breach of the most explicit assurances which had been given. After his annexation of Czechoslovakia had shaken the confidence of the world, Hitler attempted to reassure the Scandinavian States. On the 28th of April, 1939, he affirmed that he had never made any request to any of them which was incompatible with their sovereignty and independence. On the 31st of May, 1939, he signed a non-aggression Pact with Denmark.

On the 2nd of September, the day after he had invaded Poland and seized Danzig, he again expressed his determination to observe the inviolability and integrity of Norway in an aide memoire which was handed to the Norwegian Foreign Minister by the German Minister in Oslo on that day.

A month later, on the 6th of October, 1939, he said in a public speech:

"Germany has never had any conflicts of interest or even points of controversy with the Northern States, neither has she any today. Sweden and Norway have both been offered non-aggression pacts by Germany, and have both refused them solely because they do not feel themselves threatened in any way."

When the invasion of Denmark and Norway was begun in the early morning of 9 April 1940, a German memorandum was handed to the

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When the invasion of Denmark and Norway was begun in the early morning of 9 April 1940, a German memorandum was handed to the

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Governments of those countries attempting to justify the German action. Various allegations against the Governments of the invaded countries were made. It was said that Norway had been guilty of breaches of neutrality. It was said that she had allowed and tolerated the use of her territorial waters by Great Britain. It was said that Britain and France were making plans. This is to invade and occupy Norway that the government of that country was prepared to acquiesce in such an event.

I do not propose to argue the question whether or not these allegations were true or false. That question is irrelevant to the issues before this Court. Even if the allegations were true -- and they were patently false -- they would afford no conceivable justification for the action of invading without warning, without declaration of war, without any attempt at mediation or conciliation. Aggressive war is none the lessaggressive war because the state which wages it believes that other states might in the future take similar action. The rape of a nation is not justified because it is thought she may be raped by another. Nor even in self-defense are warlike measures justified except after all means of mediation have been tried and failed and force is actually being exercised against the State concerned.

But the matter is irrelevant, because in actual fact, with the evidence which we now possess, it is abundantly clear that the invasion of these two countries was undertaken for quite different purposes. It had been planned long before any question of breach of neutrality or occupation of Norway by England could ever have occurred, and it is equally clear that the assurances repeated again and again throughout 1939 were made for no other purpose than to lull suspicion in those countries and to prevent them taking steps to resist the attack against them which was all along in active preparation.

For some years the defendant Rosenberg, in his capacity as Chief of the Foreign Affairs Bureau --APA--of the N.S.D.A.P., had interested

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himself in the promotion of fifth column activities in Norway and he had established close relationship with the "Nasjonal Samling," a political group headed by the now notorious traitor Vidkun Quisling. During the winter of 1938-1939 APA was in contact with Quisling and later Quisling conferred with Hitler and with the defendants Raeder and Rosenberg. In August 1939 a special 14-day course was held at the school of the office of Foreign Relations in Berlin for 25 followers whom Quisling had selected to attend it. The plan was to send a number of selected and "reliable" men to Germany for a brief military training in an isolated camp. These "reliable men" were to be area and language specialists to German special troops who were taken to Oslo on coal barges to undertake political action in Norway. The object was a coupe in which Quisling would seize his leading opponents in Norway, including the King, and prevent all military resistance from the beginning. Simultaneously with these fifth column activities Germany was making her military preparations. On the 2 of September 1939, as I said, Hitler had assured Norway of his intention to respect her neutrality. On 6 October he said that the Scandanavian States were not menaced in any way. Yet on 3 October the defendant Raeder was pointing out that the occupation of bases, if necessary by force, would greatly improve the German strategic position. On the 9 October Doenitz was recommending Trondheim as the main base, with Narvik as an alternative base for fuel supplies. The defendant Rosenberg was reporting shortly afterwards on the possibility of a coup detát by Quisling, immediately supported by German military and naval forces. On the 12 September 1939 the defendant Raeder advised Hitler, in the presence of the defendants Keitel and Jodl, that if Hitler was favor-

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able impressed by Quisling, the OKW should prepare for the occupation of of Norway, if possible with Quisling's assistance but if necessary entirely by force. Hitler agreed, but there was a doubt whether action should be taken against the Low Countries or against Scandinavia first. Weather conditions delayed the march against the Low Countries. In January 1940 instructions were given to the German Navy for the attack on Norway. On 1 March a directive for the occupation was issued by Hitler. The general object was not said to be to prevent British encroachment in Scandinavia and the Baltic but to guarantee our ore bases in Sweden and to give our navy and air force a wider start line against Britain." But the Directive went on:

"... on principle we will do out utmost to make the operation appear as a peaceful occupation the object of which is the military protection of the Scandinavian States... It is important that the Scandinavian States as well as the Western opponents should be taken by surprise by our measures... In case the preparations for embarkation can no longer be kept secret, the leader and the troops will be deceived with fictitious objectives."

The form and success of the invasion are well known. In the early hours of the 9 April, 7 cruisers and 14 destroyers and a number of torpedo boats and other small craft carried advance elements of six divisions, totalling about 10,000 men, forced an entry, and landed troops in the outer Oslo Fjord, Kristiansand, Stavanger, Bergen, Trondheim, and Narvik. A small force of troops was also landed at Arendal and Egersund on the southern coast. In addition, airborn troops were landed near Oslo and Stavanger, and aircraft. The German attack came as a complete surprise. All the invaded towns along the coast were captured according to plan and with only slight losses. Only the plan to capture the King and Parliament failed. But brave as was the resistance which was hurriedly organized throughout the country, nothing could be done in the face of the long-planned surprise attack, and on the 10 June military resistance ceased. So was another act of aggression brought to completion.

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Almost exactly a month after the attack on Norway, on the 10 May 1940, the German Armed Forces, repeating what had been done 25 years before, streamed into Belgium, the Netherlands, and Luxemburg according to plan--a plan, that is, of invading withour warning and without any declaration of war.

What was done was, of course, a breach of the Hague Convention, and is so charged. It was a violation of the Locarno agreement of 1925, which the Nazi Government affirmed in 1935, only illegally to repudiate it a couple of years later. By that agreement all questions incapable of settlement by ordinary diplomatic means were to be settled by arbitration. You will see the comprehensive terms of those treaties. It was a breach of the Treaty of Arbitration and Conciliation signed between Germany and the Netherlands on 20 May 1926. It was a breach of a similar treaty with Luxembourg on 11 September 1929. It was a breach of the Briand-Kellogg Pact. But those treaties had not perhaps derived in the minds of the Nazi Rulers of Germany any added sanctity from the fact that they had been solemnly concluded by the governments of pre-Nazi Germany; so let us just look at the specific assurances and undertakings which the Nazi Rulers themselves gave to these states which lay in the way of their plans against France and England and which they always intended to attack. Not once, not twice, but eleven times the clearest assurances were given to Belgium, the Netherlands and Luxembourg. On those assurances solemnly and formally expressed, those countries were entitled to rely and did rely. In respect of their breach these Defendants are charged. On the 30th January 1937 Hitler said:-

> "As for the rest, I have more than once expressed the desire and the hope of entering into similar good and cordial relations with our neighbours. Germany has, and here I repeat this solemnly, given the assurance time and time again, that, for instance, between her and France there cannot be any humanly conceivable points of controversy. The German Government has further given the assurance to Belgium and Holland that it is prepared to recognise and to

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guanantee the inviolability and neutrality of these territories."

After Hitler had remilitarised the Rhineland and had repudiated the Locarno Pact, England and France sought to re-establish the position of security for Belgium which Hitler's action had threatened. They, therefore, themselves gave to Belgium on the 24th April 1937, a specific guarantee that they would maintain in respect of Belgium, undertakings of assistance which they had entered into with her both under the Locarno Pact and toe Covenant of the League of Nations. On the 13th October, 1938, the German Government also made a declaration assuring Belgium of its intention to recognise the inviolability and integrity of that country.

It is, perhaps, convenient to deal with the remaining assurances as we review the evidence which is available as to the preparations and intentions of the German Government prior to their invasion of Belgium on the 10th May 1940.

As in the case of Poland, as in the case of Nroway and Denmark, so also here the dates speak for themselves.

As early as August, 1938 steps were being made to utilise the Low Countries as defense bases for decisive action in the West in the event of France and England opposing Germany in the aggressive plan on foot against Czechoslovakia.

In an air force letter dated 25th August, 1938 which deals with the action to be taken if England and France should interfere in the operation against Czechoslovakia, it is stated "It is not expected for the moment that other States will intervene against Germany. The Dutch and the Belgia area assumes in this connection much more importance for the prevention of the war in Western Europe than during the world war. This is to be mainly an advance

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advance base for the air war."

In the last paragraph of that order it is stated "Belgium and the Netherlands when in German hands represent an extraordinary advantage in the prosecution of the air war against Great Britain as well as against France."

That was in August, 1938. Eight months later (on the 28th April, 1939) Hitler is declaring again "I was pleased that a number of European states availed themselves of this declaration by the German Government to express and emphasize their desire to have absolute neutrality."

A month later, on the 23rd May, 1939, Hitler held the conference in the Reich Chancellery, to which we have already referred. The Minutes of that meeting report Hitler as saying, "The Dutch and Belgian air bases must be occupied by armed force. Declarations of neutrality must be ignored. If England and France enter the war between Germany and Poland they will support Holland and Belgium in their neutrality ..... Therefore, if England intends to intervene in the Polish war, we must occupy Holland with lightning speed. We must aim at securing new defence lines on Dutch soil up to the Zuyder Zee".

Even after that he was to give his solemn declarations that he would observe the neutrality of these countries. On the 26th August, 1939 when the crisis in regard to Danzig and Poland was reaching its climax the very day he picked for the invasion of Poland declarations assuring the Governments concerned of the intention to respect their neutrality were handed by the German Ambassadors to the King of the Belgians, the Queen of the Netherlands and to the Government of the Grand Duchy of Luxembourg in the most solemn form. But to the Army, Hitler was saying "If Holland and Belgium are successfully occupied and held a successful war against England will be secured."

On the 1st September, Poland was invaded, and two days later England and France came into the War against Germany, in pursuance of the treaty obligations already referred to. On the 6 October Hitler renewed his assurances of friendship to Belgium and Holland, but on the 9 October, before any kind of accusation had been made by the German Government of breaches of neutrality, Hitler issued a directive for the conduct of

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the war.

In that directive he stated:

" 1) If it becomes evident in the near future that England and France acting under her leadership, are not disposed "to end the war, I am determined to take firm and offensive action without letting much time elapse.

" 2) A long waiting period results not only in the ending of the advantage to the Western Powers, of Belgian and perhaps also of Dutch neutrality, but also strengthens the military power of our enemies to an increasing degree, causes confidence of the neutrals in German final victory to wane, and does not help to bring Italy to our aid as brothers-in-arms.

" 3) I therefore issue the following orders for the further conduct of military operations:-

(a) Preparations should be made for offensive action on the Northern flank of the Western front crossing the area of Luxembourg, Belgium and Holland. This attack must be carried out as soon and as forcefully as possible.

(b) The object of this attack is to defeat as many strong sections of the French Fighting Army as possible, and her ally and partner in the fighting, and at the same time to acquire as great an area of Holland, Belgium and Northern France as possible, to use as a base offering good prospects for waging aerial and sea warfare against England and to provide ample coverage for the vital district of the Ruhr."

Nothing could state more clearly or more definitely the object behind the invasion of these three countries than that document expresses it.

On the 15th October 1939 the Defendant Keitel wrote a most secret letter concerning Fall Gelb which was the code name for the operation against the Low Countries. In it he stated: "The protection of the Ruhr area by moving A/C reporting service and the air defence as far forward

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as possible in the area of Holland is significant for the whole conduct of the war. The more Dutch territory we occupy the more effective can the defence of the Ruhr area be made. This point of view must determine the choice of objectives of the army even if the army and navy are not directly interested in such territorial gain. It must be the object of the army's preparations, therefore, to occupy on receipt of a special order the territory of Holland in the first instance in the area of the Grebbe-Maese line. It will depend on the military and political attitude of the Dutch as well as on the effectiveness of their flooding, whether objects can and must be further extended."

The Fall Gelb operation had apparently been planned to take place at the beginning of November, 1939. We have in our possession a series of 17 letters dated from 7th November until the 9th May postponing almost from day to day the D-day of the operation, so that by the beginning of November all the major plans and preparations had been made.

On the 10th January 1940 a German aeroplane force-landed in Belgium. In it was found the remains of an operation order which the pilot attempted to burn, setting out considerable details of the Belgian landing grounds that were to be captured by the Air Force. Many other documents have been found which illustrate the planning and preparation for this invasion in the latter half of 1939 and early 1940, but they carry the matter no further, and they show no more clearly than the evidence to which I have already referred, the plans and intention of the German Governments and its armed forces.

On the 10th May 1940 at about 0500 hrs. in the morning the German invasion of Belgium, Holland and Luxembourg began.

Once more the forces of aggression marched on. Treaties, assurances, the rights of Sovereign States meant nothing. Brutal force, covered by as great an element of surprise as the Nazi's could secure, was to seize that which was deemed necessary for striking the mortal blow against England, the main Enemy. The only fault of these unhappy countries was that they stood in the path of the German invader. But that was enough in his designs against England and France, and they were invaded.

A recess was then taken at 1523 to 1545.

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On the 6th of April, 1941, German armed forces invaded Greece and Yugoslavia. Again the blow was struck without warning and with the cowardice and deceit which the world now fully expected from the self-styled "Herrenvolk." It was a breach of the Hague Convention. It was a breach of the Pact of Paris. It was a breach of a specific assurance given by Hitler on the 6th of October 1939.

He said this: "Immediately after the completion of the Anschluss I informed Yugoslavia that from now on the frontier with this country will also be an unalterable one and that we only desire to live in peace and friendship with her."

But the plan for aggression against Yugoslavia had, of course, been in hand well before that. In the aggressive action eastward towards the Ukraine and the Soviet territories security of the Southern flank and the lines of communication had already been considered by the Germans.

The history of the events leading up to the invasion of Yugoslavia by Germany is well known. At three o'clock on the morning of the 28th of October 1940 a three-hour ultimatum had been presented by the Italian Government to the Greek Government and the presentation of that ultimatum was immediately followed by the aerial bombardment of Greek provincial towns and the advance of Italian troops into Greek territory. The Greeks were not prepared. They were at first forced to withdraw. But later the Italian advance was first checked, then driven towards the Albanian frontier and by the end of 1940 the Italian Army had suffered severe reverses at Greek hands.

Of the German position in the matter there is, of course, the evidence of what occurred when, on the 12th of August, 1939, Hitler held his meeting with Ciano.

You will remember that Hitler said then: "Generally speaking, the best thing to happen would be for the neutrals to be liquidated one after the other. This process could be carried out more easily if on every occasion one partner of the Axis covered the other while it was dealing with an uncertain neutral. Italy might well regard Yugoslavia as a neutral of this kind."

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Then the conference went on and it met again on the 13th of August and, in the course of lengthy discussions, Hitler said this: "In general, however, success by one of the Axis partners not only strategical but also psychological strengthening of the other partner and also of the whole Axis would ensue. Italy carried through a number of successful operations in Abyssinia, Spain and Albania, and each time against the wishes of the Democratic Entente. These individual actions have not only strengthened Italian local interests but have also reinforced her general position. The same was the case with German action in Austria and Czechoslovakia. The strengthening of the Axis by these individual operations was

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of the greatest importance for the unavoidable clash with the Western Powers."

And so once again we see the same procedure being followed. That meeting had taken place on the 12th and he 13th of August of 1939. Less that two months later, Hitler was giving his assurance to Yugoslavia that Germany only desired to live in peace and friendship with her, with the Yugoslav State, the liquidation of which by his Axis Partner he had himself so recently suggested.

Then came the Italian ultimatum to Greece and war against Greece and the Italian reverse.

We have found amongst the captured documents an undated letter from Hitler to Mussolini which must have been written about the time of the Italian aggression against Greece.

"Permit me", Hitler said, at the beginning of this letter to assure you that within the last fourteen days my heart and my thoughts have been more than ever with you. Moreover, Duce, be assured of my determination to do everything on your behalf which might ease the present situation for you. When I asked you to receive me in Florcen, I undertook the trip in the hope of being able to express my views prior to the beginning of the threatening conflict with Greece, about which I had only received general information. First, I wanted to request you to postpone the action, if at all possible, until a more favorable time of the year, at all events until after the American Presidential Election. But in any case, however, I wanted to request you, Duce, not to undertake this action without a previous lightning-like occupation of Crete, and for this purpose, I also wanted to submit to you some practical suggestions in regard to the employment of a German parachute division and a further airborne division. Yugoslavia must become dis-interested, if possible, however, from our point of view interested in cooperating in the liquidation of the Greek question. Without assurances from Yugoslavia, it is useless to risk any successful operation in the Balkans. Unfortunately, I must stress the fact that waging a war in the Balkans before March is impossible. Hence it would also serve to make any threatening influence

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upon Yugoslavia of no purpose, since the Serbian General Staff is well aware of the fact that no practical action could follow such a threat before March. Hence, Yugoslavia must, if at all possible, be won over by other means and other ways."

On the 12th of November of 1939 in his Top Secret Order, Hitler ordered the OKH to make preparations to occupy Greece and Bulgaria, if necessary. Apparently, ten divisions were to be used in order to prevent Turkish intervention. I think I said 1939; it should, of course, have been the 12th of November 1940. And to shorten the time the German divisions in Rumania were to be increased.

On the 13th of December Hitler issued an order to OKW, OKL, and OKH, OKM, and the General Staff on the operation "Marita", as the invasion of Greece was to be called. In that order it was stated that the invasion of Greece is planned and is to commence as soon as the weather was advantageous. A further order was issued on the 11th of January of 1941.

On the 28th of January of 1941 Hitler saw Mussolini. The defendants Jodl, Keitel and Ribbentrop were present at the meeting. We know about it from Jodl's notes of what took place. We know that Hitler stated that one of the purposes of German troop concentrations in Rumania was for use in the plan "Marita" against Greece.

On the 1st of March, 1941, German troops entered Bulgaria and moved towards the Greek frontier. In the face of this threat of an attack on Greece by German as well as Italian forces, British troops were landed in Greece on the 3rd of March, in accordance with the declaration which had been given by the British Government on the 13th of April, 1939, that Britain would feel bound to give Greece and Roumania respectively all the support in her power in the event of either country becomming the victim of aggression and resisting such aggression. Already, of course, the Italian operations had made that pledge operative.

On the 25th of March of 1941, Yugolsavia, partly won over by the other means and other ways to which Hitler had referred, signed the three-power pact which had already been signed by Germany, Italy and Japan. The preamble of the Pact stated that the three powers would stand side

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by side and work together.

On the same day the Defendant Ribbentrop wrote two notes to the Yugoslav Prime Minister assuring him of Germany's full intention to respect the sovereignty and independence of his country. That declaration was just another example of the treachery employed by German diplomacy. We have already seen the preparations that had been made. We have seen Hitler's attempts to tempt

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the Italians into an aggression against Yugoslavia. We have seen, in January, his own orders for preparations to invade Yugoslavia and then Greece. And now, on the 25th of March, he is signing a pact with that country and his Foreign Minister is writing assurances of respect for her sovereignty and territorial integrity.

As a result of the signing of that pact, an anti-Nazi element in Yugoslavia immediately accomplished a coup d'etat and established a new government. And thereupon, no longer prepared to respect the territorial integrity and sovereignty of her ally, Germany immediately took the decision to invade. On the 27th of March, two days after the three-power pact had been signed, Hitler issued instructions that Yugoslavia was to be invaded and used as a base for the continuance of the combined German and Italian operation against Greece.

Following that, further deployment and instructions for the action Marita were issued by von Brauchitsch on the 30th of March, 1941.

It was stated -- and I quote -- that "the orders issued with regard to the operation against Greece remain valid so far as not affected by this order. On the 5th April, weather permitting, the Air Forces are to attack troops in Yugoslavia, while simultaneously the attack of the 12th Army begins against both Yugoslavia and Greece."

As we now know, the invasion actually commenced in the early hours of the 6th of April.

Treaties, pacts, assurances, obligations of any kind, are brushed aside and ignored wherever the aggressive interests of Germany are concerned.

I turn now to the last act of aggression in Europe -- my American colleagues will deal with the position in relation to Japan -- I turn now to the last act of aggression in Europe with which these Nazi conspirators are charged, the attack upon Russia.

In August of 1939 Germany, although undoubtedly intending to attack Russia at some convenient opportunity, concluded a treaty of non-aggression with the Union of Soviet Socialist Republics. When Belgium and the low countries were occupied and France collapsed in June of 1940,

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England -- although with the inestimably valuable moral and economic support of the United States of America -- was left alone in the field as the sole representative of democracy in the face of the forces ofaggression. At that moment only the British Empire stood between Germany and the achievement of her aim to dominate the Western World. Only the British Empire -- only England as its citadel. But it was enough. The first, and possibly the decisive, military defeat which the enemy sustained was in the campaign against England; and that defeat had a profound influence on the future course of the war.

On the 16th of Julyof 1940 Hitler issued to the Defendants Keitel and Jodl a directive -- which they found themselves unable to obey -- for the invasion of England. It started off -- and Englishmen will forever be proud of it -- by saying that:

"Since England, despite her militarily hopeless situation, shows no signs of willingness to come to terms, I have decided to prepare a landing operation against England and if necessary to carry it out. The aim is to eliminate the English homeland as a base for the carrying on of the war against Germany. The preparations for the entire operation must be completed by mid-August."

But the first essential condition for that plan was -- and I quote -- "that the British Air Force must morally and actually be so far overcome that it does not any longer show any considerable aggressive force against the German attack."

The Defendant Goering and his Air Force, no doubt, made the most strenuous efforts to realize that condition, but, in one of the most splendid pages of our history, it was decisively defeated. And although the bombardment of England's towns and villages was continued throughout thatdark winter of 1940-41, the enemy decided in the end that England was not to be subjugated by these means, and, accordingly, Germany turned back to the East, the first major aim unachieved.

On the 22nd of June, 1941, German armed forces invaded Russia, without

warning, without declaration of war. It was, of course, a breach of the usual series of Treaties; they meant no more in this case than they had meant in the other cases. It was a violation of the Pact of Paris; it was a flagrant contradiction of the treaty of non-aggression which Germany and Russia had signed on the 23rd of August a year before.

Hitler himself said, inreferring to that agreement, that agreements were only to be kept as long as they served a purpose.

The Defendant Ribbentrop was more explicit. In an interview with the Japanese Ambassador in Berlin on the 23rd of February 1941, he made it clear that the object of the agreement had merely been, so far as Germany was concerned, to avoid a two-front war.

In contrast to what Hitler and Ribbentrop and the rest of them were planning within the secret councils of Germany, we know what they were saying to the rest of the world.

On the 19th of July, Hitler spoke in the Reichstag: "In these circumstances", he said, "I considered it proper to negotiate as a first priority a sober definition of interests with Russia. It would be made clear once and for all what Germany believes she must regard as her sphere of interest to safeguard her future and, on the other hand, what Russia considers important for her existence."

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From this clear delineation of the sphere of interest there followed the new regulation of Russo-German relations.

"Any hope that now at the end of the term of the agreement a new Russo-German tension could arise is childish. Germany has taken no step which would lead her outside her sphere of interest, nor has Russia. But England's hope, to achieve an amelioration of her own position through the engineering of some new European crisis, is, in so far as it is concerned with Russo-German relations, an illusion.

"English statesmen perceive everything somewhat slowly, but they too will learn to understand this in the course of time."

The whole statement was, of course, a tissue of lies. It was not many months after it had been made that the arrangements for attacking Russia were put into hand. The Defendant Raeder gives us the probable reasons for it, in a note which he sent to Admiral Assmann:

"The fear that control of the air over the Channel in the Autumn of 1940 could no longer be attained, a realization which the Fuehrer no doubt gained earlier than the Naval War Staff, who were not so fully informed of the true results of air raids on England (our own losses), surely caused the Fuehrer, as far back as August and September"--this was August and September of 1940--"to consider whether, even prior to victory in the West, an Eastern campaign would be feasible with the object of first eliminating our last serious opponent on the Continent. The Fuehrer did not openly express this fear, however, until well into September."

He may not have spoken to the Navy of his intentions until later in September, but by the beginning of that month he had undoubtedly told the Defendant Jodl about them.

Dated the 6th of September, 1940, we have a directive of the OKW signed by the Defendant Jodl; and I quote:

"Directions are given for the occupation forces in the East to

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be increased in the following week. For security reasons this should not create the impression in Russia that Germany is preparing for an eastern offensive."

Directives are given to the German Intelligence Service pertaining to the answering of questions by the Russian Intelligence Service, and I quote:

"The total strength of the German troops in the East is to be camouflaged by frequent changes in this area. The impression is to be created that the bulk of the troops in the South have moved, whilst the occupation in the North is only very small."

And so we see the beginning of the operations.

On the 12th of November, 1940, Hitler issued a directive signed by the Defendant Jodl in which it was stated that the political task to determine the attitude of Russia had begun, but without reference to the result of preparations against the East, which had been ordered orally.

It is not to be supposed that the USSR would have taken part in any conversations at that time if it had been realized that on the very day orders were being given for preparations to be made for the invasion of Russia, the order for the operation, which was called the plan Barbarossa, was in active preparation. On the 16th of November the order was issued, and I quote:

"The German armed forces have to be ready to defeat Soviet Russia in a swift campaign before the end of the war against Great Britain."

And later, in the same instruction--and I quote again:

"All orders which shall be issued by the High Commanders in accordance with this instruction have to be clothed in such terms that they may be taken as measures of precaution in case Russia should change her present attitude towards ourselves."

Germany kept up the pretense of friendliness and, on the 10th of January 1941, well after the Plan Barbarossa for the

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invasion of Russia had been decided upon, Germany signed the German-Russo frontier treaty. Less than a month later, on the 3rd of February of 1941, Hitler held a conference, attended by the Defendants Keitel and Jodl, at which it was provided that the whole operation against Russia was to be camouflaged as if it was part of the preparation for the Seelowe, as the plan for the invasion of England was described.

By March of 1941 plans were sufficiently advanced to include provision for dividing the Russian territory into nine separate states to be administered under Reich Commissars, under the general control of the Defendant Rosenberg; and at the same time detailed plans for the economic exploitation of the country were made under the supervision of the Defendant Goering, to whom the responsibility in this matter--and it is a serious one--had been delegated by Hitler.

You will hear something of the details of these plans. I remind you of one document which has already been referred to in this connection.

It is significant that on the 2nd of May of 1941 a conference of State Secretaries took place in regard to the Plan Barbarossa, and in the course of that it was noted:

"1. The war can only be continued if all armed forces are fed out of Russia in the third year of the war.

"2. There is no doubt that as a result many millions of people will be starved to death if we take out of the

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country the things necessary for us".

But that apparently caused no concern. The Plan Oldenberg, as the scheme for economic organization, went on. By the 1st May 1941, the D-day of the operation had been fixed. By the 1st June preparations were virtually complete and an elaborate time-table was issued. It was estimated that although there would be heavy frontier battles, lasting perhaps four weeks, after that no serious opposition was to be expected.

On the 22nd June, at 3.30 in the morning, the German armies marched again. As Hitler said in his proclamation to them: "I have decided to give the fate of the German people and of the Reich and of Europe again into the hands of our soldiers."

The usual false pretexts were, of course, given. Ribbentrop stated on the 28th June that the step was taken because of the threatening of the German frontiers by the Red Army. It was a lie, and the Defendant Ribbentrop knew it was a lie.

On the 7th June, 1941, Ribbentrop's own Ambassador in Moscow was reporting to him, and I quote, that "All obsertations show that Stalin and Molotov, who are alone responsible for Russian foreign policy, are doing everything to avoid a conflict with Germany." The staff records which you will see make it clear that the Russians were making no military preparations and that they were continuing their deliveries under the Trade Agreement to the very last day. The truth is, of course, that the elimination of Russia as a political opponent and the incorporation of the Soviet territory in the German Labenstraum had been one of the cardinal features of Nazi policy for a very long time, subordinated latterly for what the Defendant Jodl called diplomatic reasons.

And so, on the 22nd June, the Nazi armies were flung against the power with which Hitler had so recently sworn friendship, and Germany embarked upon that last act of aggression in Europe, which, after long and bitter fighting, was eventually to result in Germany's own collapse.

That, then, is the case against these Defendants, as amongst the rulers of Germany, under Count 2 of this Indictment.

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It may be said that many of the documents which have been referred to were in Hitler's name, and that the orders were Hitler's orders, and that these men were mere instruments of Hitler's will. But they were the instruments without which Hitler's will could not be carried out; and they were more than that. These men were no mere willing tools, although they would be guilty enough if that had been their role. They are the men whose support had built Hitler up into the position of power he occupied; these are the men whose initiative and planning often conceived and certainly made possible the acts of aggression done in Hitler's name; and they are the men who enabled Hitler to build up the Army, the Navy, the Air Force, the War Economy, the political philosophy by which these treacherous attacks were carried out, and by which he was able to lead his fanatical followers into peaceful countries to murder, to loot, and to destroy. They are the men whose cooperation and support made the Nazi Government of Germany possible.

The government of a totalitarian country may be carried on without representatives of the people, but it cannot be carried on without any assistance at all. It is no use having a leader unless there are also people willing and ready to serve their personal greed and ambition by helping and following him. The dictator who is set up in control of the destinies of his country does not depend upon himself alone either in acquiring power or in maintaining it. He depends upon the support and backing which lesser men, themselves lusting to share in dictatorial power, anxious to bask in the adulation of their leader, are prepared to give.

In the criminal courts of our countries, when men are put upon their trial for breaches of the municipal laws, it not infrequently happens that of a gang indicted together in the Dock, one has the master mind, the leading personality. But it is no excuse for the common

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thief to say "I stole because I was told to steal", for the murderer to plead "I killed because I was asked to kill." And these men are in no different position for all that it was nations they sought to rob, and whole people which they tried to kill. "The warrant of no man excuseth the doing of an illegal act." Political loyalty, military obedience, are excellent things, but they neither require nor do they justify the commission of patently wicked acts. There comes a point where a man must refuse to answer to his leader if he is also to answer to his conscience. Even the common soldier, serving in the ranks of his army, is not called upon to obey illegal orders. But these men were no common soldiers: they were the men whose skill and cunning, whose labor and activity, made it possible for the German Reich to tear up existing treaties, to enter into new ones and to flount them, to reduce international negotiations and diplomacy to a hollow mockery, to destroy all respect for and effect in international law, and finally, to march against the peoples of the world to secure that domination in which, as arrogant members of their self-styled master race, they professed their belief.

If these crimes were in once sense the crimes of Nazi Germany, they also are guilty as the individuals who aided, abetted, counselled, procured and made possible the commission of what was done.

The total sum of the crime these men have committed--so awful in its comprehension--has many aspects. Their lust and sadism, their deliberate slaughter and degradation of so many millions of their fellow creatures that the imagination reels, are but one side of this matter. Now that an end has been put to this nightmare, and we come to consider how the future is to be lived, perhaps their guilt as murderers and robbers is of less importance and of less effect to future generations of mankind than their crime of fraud and deceipt--the fraud by which they placed themselves in a position to do their murder and their robbery. That is the other aspect of their guilt. The story of their "diplomacy", founded upon cunning, hypocrosy and bad faith, is a story less gruesom but no less evil and deliberate. And should it be taken as a precedent

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of behavior in the conduct of international relations, its consequences to mankind will no less certainly lead to the end of civilized society. Without trust and confidence between nations, without the faith that what is said is meant and what is undertaken will be observed, all hope of peace and security is dead. The Governments of the United Kingdom and the British Commonwealth, of the United States of America, of the Union of Soviet Socialist Republics and of France, backed by and on behalf of a very other peace-loving nation of the world, have therefore joined to bring the inventors and perpertrators of this Nazi conception of international relation before this Tribunal. They do so, so that these Defendants may be punished for their crimes. They do so, so that their conduct may be exposed in all of its naked wickedness and they do so in the hope that the conscience and good sense of all the world will see the consequences of such conduct and the end to which it must inevitably lead. Let us once again restore sanity and with it also the sanctity of our obligations towards each other.

THE PRESIDENT: Mr. Attorney, would it be convenience to the Prosecutors of Great Britain to continue?

MR. SHAWCROSS: The proposal was that my friend, Mr. Sidney Alderman, would continue with the presentation of the case with regard to the final acts of aggression against Czechoslovakia and that that being done, my British colleagues would continue. As the Tribunal will appreciate, Counts one and two are in many respects compelementary, and America and ourselves are working in closest cooperation in presenting the evidence affecting those counts.

THE PRESIDENT: Mr. Alderman, would it be convenient for you to go on until five o'clock?

MR. ALDERMAN: Yes. May it please the Tribunal, it is quite convenient for me to proceed. I can but feel that it will be quite an anti-climax after the address to which you have just listened.

When the Tribunal rose yesterday afternoon, I had just completed an outline of the plans laid by the Nazi conspirators in the weeks immediately following the Munich agreement. These plans called for what the German

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officials called the liquidation of the remainder of Czechoslovakia. You will recall that three weeks after Munich, on 21 October, the same day on which the administration of the Sudetenland was handed over to the civilian authorities, Hitler and Keitel had issued an order to the armed forces. This document is C-136, Exhibit U.S.A. No-104.

In this order, Hitler and Keitel ordered the beginning of preparations by the armed forces for the conquest of the remainder of Czechoslovakia. You will also recall that two months later, on 17 December, the Defendant Keitel issued an appendix to the original order directing the continuation of these preparations. This document is C-138, Exhibit U.S.A. No-105, and both these documents have already been introduce.

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Proceeding on the assumption that no resistance worth mentioning was to be expected, this order emphasized that the attack on Czechoslovakia was to be well camouflaged so that it would not appear to be a war-like action. "To the outside world" it said--and I quote--"it must appear that it is merely an action of pacification and not a war-like undertaking."

Thus, in the beginning of 1939 the basic plan for military action against the mutilated Czechoslovakian Republic had already been carried out by the German High Command.

I turn now to the underhanded and criminal method used by the Nazi conspirators to ensure that no resistance worth mentioning would, in fact, be met by the German Army. As in the case of Austria and the Sudetenland, the Nazi conspirators did not intend to rely on the Wehrmacht alone to accomplish their calculated objective of a liquidated Czechoslovakia. With the German minority separated from Czechoslovakia, they could no longer use the cry, "Home to the Reich." One sizable minority, the Slovaks, still remained within the Czechoslovak State.

I should mention at this point that the Czechoslovak Government had made every effort to conciliate Slovak extremists in the months after the cession of the Sudetenland. Autonomy had been granted to Slovakia, with an autonomous Cabinet and Parliament at Bratislava. Nevertheless, despite these concessions it was in Slovakia that the Nazi conspirators found fertile ground for their tactics. The picture which I shall now draw of Nazi operations in Slovakia is based on the Czechoslovakian official Government Report, Document No. 998-PS, already admitted in evidence, Exhibit USA 91, of which the Court has already taken judicial notice.

Nazi propaganda and research groups had long been interested in maintaining close connection with the Slovak Autonomist Opposition. When Bela Tuka, who later became Prime Minister of the puppet state of Slovakia, was tried for espionage and treason in 1939 the evidence established that he had already established connections with Nazi groups in Germany. Prior to 1938 Nazi aides were in close contact

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with the Slovak traitors living in exile and were attempting to establish more profitable contacts in the semi-fascist Catholic People's Party of Monsignor Andrew Hlinka. In February and July, 1938, leaders of the Henlein movement conferred with top men of Father Hlinka's party and agreed to furnish one another with mutual assistance in pressing their respective claims to autonomy. This understanding proved useful in the September agitation when at the proper moment the Foreign Office in Berlin wired Henlein leader, Kundt,

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in Prague to tell the Slovaks to start their demands for autonomy.

This telegram, our Document Number 2858 PS Exhibit USA 87, has already been introduced in evidence and read.

By this time--midsummer, 1938--the Nazis were in direct contact with figures in the Slovak Autonomist Movement and had paid agents among the higher staff of Father Hlinka's party. These agents undertook to render impossible any understanding between the Slovak Autonomists and the Slovak parties in the Government at Prague.

Hans Karmasin, later to become Volksgruppenfuehrer, had been appointed Nazi leader in Slovakia and professed to be serving the cause of Slovak autonomy while actually on the Nazi payroll. On 22 November, the Nazis indiscreetly wired Karmasin to collect his money at the German legation in Prague, and I offer in evidence Document 2859-PS as Exhibit USA 107, captured from the German Foreign Office files. I read this telegram which was sent from the German legation at Prague to Pressburg:

"Delegate Kundt asks to notify State Secretary Karmasin he would appreciate it if he could personally draw the sum which is being kept for him at the treasury of the embassy. /signed/ Hencke."

Karmasin proved to be extremely useful for the Nazi cause. Although it is out of its chronological place in my discussion, I should like now to offer in evidence Document 2794-PS, a captured memorandum of the German Foreign Office which I offer as Exhibit USA 108, dated Berlin, 29 November, 1939.

This document, dated eight months after the conquest of Czechoslovakia, throws a revealing light both on Karmasin and on the German Foreign Office, and I now read from this memorandum:

"On the question of payments to Karmasin.

"Karmasin receives 30,000 Marks from the VDA (Peoples' League for Germans Abroad) until 1 April 1940; from then on 15,000 Marks monthly.

"Furthermore, the Central Office for Racial Germans (Volksdeutsche Mittelstelle) has deposited 300,000 Marks for Karmasin with the German mission in Bratislava (Pressburg) on which he could fall back in an emergency.

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"Furthermore, Karmasin has received money from Reich Minister Seyss-Inquart; for the present it has been impossible to determine what amounts had been involved, and whether the payments still continue.

"Therefore, it appears that Karmasin has been provided with sufficient money; thus one could await whether he would put up new demands himself.

"Herewith presented to the Reich Foreign Minister. /signed/ Woermann."

This document shows the complicity of the German Foreign Office in the subsidization of illegal organizations abroad. More important, it shows that the Germans still considered it necessary to supply their undercover representatives in Pressburg with substantial funds, even after the declaration of the so-called Independent State of Slovakia.

Sometime in the winter of 1938-1939, the defendant Goering conferred with Durkansky and Mach, two leaders in the Slovak extremist group, who were accompanied by Karmarsin. The Slovaks told Goering of their desire for what they called independence, with strong political, economic and military ties to Germany. They promised that the Jewish problem would be solved as it had been solved in Germany; that the Communist Party would be prohibited. The notes of the meeting report that Goering considered that the Slovak efforts toward independence were to be supported, but as the document will show, his motives were scarcely altruistic.

I now offer 2801-PS as Exhibit USA 109, undated minutes of a conversation between Goering and Durkansky. This document was captured among the files of the German Foreign Office.

I now read these minutes, which are jotted down in somewhat telegraphic style:

"To begin with Durkansy (Deputy Prime Minister) reads out declaration, Contents: 'Friendship for the Fuehrer; gratitude, that through the Fuehrer autonomy has become possible for the Slovaks'. The Slovaks never want to belong to Hungary. The Slovaks want full independence with strongest political, economic and military ties to Germany. Bratislava to be the capital. The execution of the plan only possible if the army and police are Slovak.

"An independent Slovakia to be proclaimed at the meeting of the first

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Slovak Diet. In the case of a plebiscite the majority would favour a separation from Prague. Jews will vote for Hungary. The area of the plebiscite to be up to the March, where a large Slovak population lives.

"The Jewish problem will be solved similarly to that in Germany. The Communist Party to be prohibited.

"The Germans in Slovakia do not want to belong to Hungary but wish to stay in Slovakia.

"The German influence with the Slovak Government considerable; the appointment of a German Minister (member of the cabinet) has been promised.

"At present negotiations with Hungary are being conducted by the Slovaks. The Czechs are more yielding

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towards the Hungarians than the Slovaks.

"The Fieldmarshall--" That is Fieldmarshall Goering--"considers that the Slovak negotiations towards independence are to be supported in a suitable manner. Czechoslovakia without Slovakia is still more at our mercy.

"Air bases in Slovakia are of great importance for the German Air Force for use against the East."

On 12 February a Slovak delegation journed to Berlin. It consisted of Tuka, one of the Slovaks with whom the Germans had been in contact, and Karmarsin, the paid representative of the Nazi conspirators in Slovakia. They conferred with Hitler and the defendant Ribbentrop in the Reich Chancellery in Berlin on Sunday, 12 February 1939.

I now offer in evidence Document 2790-PS as Exhibit USA 110, the captured German Foreign Office minutes of that meeting.

(reading)

"After a brief welcome Tuca thanks the Fuehrer for granting this meeting. He addresses the Fuehrer with 'My Fuehrer' and he voices the opinion that he, though only a modest man himself, might well claim to speak for the Slovak nation. The Czech courts and prison gave him the right to make such a statement. He states that the Fuehrer had not only opened the Slovak question but that he had been also the first one to acknowledge the dignity of the Slovak nation. The Slovakian people will gladly fight under the leadership of the Fuehrer for the maintenance of European civilization. Obviously future association with the Czechs had become an impossibility for the Slovaks from a moral as well as an economic point of view."

Then, skipping to the last sentence:

"'I entrust the fate of my people to your care,'" addressing that to the Fuehrer.

During the meeting the Nazi conspirators apparently were successful in planting the idea of insurrection with the Slovak Delegation. I refer to the final sentence of the document, which I have just read, the sentence spoken by Tuka: "I entrust the fate of my people to your care."

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It is apparent from these documents in mid-February, 1939, the Nazis had a well disciplined group of Slovaks at their service, many of them drawn from the ranks of Father Hlinka's party. Flattered by the personal attention of such men as Hitler and the defendant Ribbentrop and subsidized by German representatives, these Slovaks proved willing tools in the hands of the Nazi conspirators.

In addition to Slovaks, the conspirators made use of the Germans still remaining within the mutilated Czechoslovak Republic. Kundt, Henlein's deputy who had been appointed leader of this German minority, created asmany artificial "focal points of German culture" as possible. Germans from the districts handed over to Germany were ordered from Berlin to continue their studies at the German University in Prague and to make it a center of aggressive Nazism. With the assistance of German civil servants, a deliberate campaign of Nazi infiltration into Czech public and private institutions was carried out, and the Henleinist movement gave full cooperation to Gestapo agents from the Reich who appeared on Czech soil. The Nazi political activity was designed to undermine and to weaken Czech resistance to the commands from Germany.

In the face of continued threats and duress on both diplomatic and propaganda levels, the Czech Government was unable to take adequate measures against these trespassers upon its sovereignty.

I am using as the basis of my remarks the Czechoslovak official Government Report, Document No. 998-PS.

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In early March, with the date for the final march into Czechoslovakia already close at hand, fifth column activity moved into its final phase. In Bohemia and Moravia the FS, Henlein's equivalent of the SS, were in touch with the Nazi conspirators in the Reich and laid the groundwork of the events of 14 and 15 March.

I now offer in evidence document 2826 PS as Exhibit U.S.A.111. This is an article by SS Group Leader Karl Herman Frank, published in the publication Bohmen und Mahren, the official Periodical of the Reichs Protector of Bohemia and Moravia, edition May 1941, page 179.

This is an article written by one of the Nazi leaders in Czechoslovakia at the moment of Germany's greatest military successes. It is a boastful article and reveals with a frankness rarely found in the Nazi press both the functions which the FS and the SS served and the pride the Nazi conspirators took in the activities of these organisations. It is a long quotation.

THE PRESIDENT: Are you going on with this tomorrow, Mr. Alderman?

MR. ALDERMAN: Yes.

THE PRESIDENT: Will you take the whole day?

MR. ALDERMAN: No, not more than an hour and a half.

THE PRESIDENT: And after that the British Prosecutors will go on?

MR. ALDERMAN: Yes.

(Whereupon at 1700 hours the hearing of the Tribunal adjourned to reconvene at 1000 hours on 4 December 1945).